

**PART 2**

**EXHIBITS TO  
DECLARATION OF  
SARAH BLAINE**

# **EXHIBIT 8**

2981.101

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
DOCKET NO. 07-CV-1359

CHAYA GROSSBAUM and MENACHEM  
GROSSBAUM, her spouse, individually  
and as guardians ad litem of the  
infant, ROSIE GROSSBAUM,

DEPOSITION OF:

Plaintiffs,

MENACHEM MENDEL GROSSBAUM

vs.

GENESIS GENETICS INSTITUTE,  
L.L.C., of the State of Michigan,  
MARK R. HUGHES, M.D., NEW YORK  
UNIVERSITY SCHOOL OF MEDICINE and  
NEW YORK UNIVERSITY HOSPITALS  
CENTER, both corporations in the  
State of New York, ABC  
CORPORATIONS 1-10 and JOHN DOE  
1-10,

COPY

Defendants.

-----  
B E F O R E: NANCY J. GILMARTIN, a  
Certified Shorthand Reporter and Notary Public of  
the State of New Jersey at the office of  
NUSSBAUM, STEIN, GOLDSTEIN, BRONSTEIN & KRON,  
ESQS., 20 Commerce Boulevard, Succasunna, New  
Jersey, on Thursday, March 12, 2009, commencing  
at 2:45 p.m., Pursuant to Notice.

GILMARTIN COURT REPORTING SERVICE  
Certified Shorthand Reporters  
28 Peterson Road  
P.O. Box 5879  
Hillsborough, New Jersey 08844  
(908) 369-0080  
FAX (908) 369-0081

## APPEARANCES:

NUSSBAUM, STEIN, GOLDSTEIN, BRONSTEIN  
& KRON, ESQS.  
BY: LEWIS STEIN, ESQ.  
For the Plaintiffs

STEPHEN N. LEUCHTMAN, P.C.  
BY: STEPHEN N. LEUCHTMAN, ESQ.  
For the Defendants Genesis  
Genetics Institute, L.L.C. and  
Dr. Hughes

MARSHALL DENNEHEY, WARNER, COLEMAN &  
SOGGIN, ESQS.  
BY: R. SCOTT EICHHORN, ESQ.  
For the Defendants New York  
University School of Medicine  
and New York University  
Hospitals Center

4  
1 MENACHEM M. GROSSBAUM,  
2 97 Mill Street, Morristown, New Jersey,  
3 having duly affirmed, testified as  
4 follows:  
5

## 6 DIRECT EXAMINATION BY MR. EICHHORN:

7 Q Good afternoon, Mr. Grossbaum. You  
8 have been here and listened to me question your  
9 wife for the better part of a day back in  
10 December and for the first half of today, and now  
11 it's your turn to have your deposition taken.

12 Do you remember the instructions that I  
13 gave to your wife at the outset of her deposition  
14 in December?

15 A Basically answer the questions.  
16 Don't cut you off.

17 Q Part of it. Those are two good  
18 ones, yes. Tell the truth.

19 A She said that already so.

20 Q Don't guess at anything. You can  
21 estimate. If you are estimating, tell us, but if  
22 your estimation gets to the point that it's a  
23 guess, tell us you would have to guess and we  
24 don't want a guess. Okay?

25 A Okay.

## INDEX

WITNESS DIRECT CROSS REDIRECT RECROSS

MENACHEM MENDEL GROSSBAUM

By Mr. Eichhorn 4 68,81

By Mr. Leuchtmann 64 80,92

## EXHIBITS

FOR ID DESCRIPTION PAGE

5  
N. Grossbaum - Direct

1 Q The reason for that is because,  
2 since you're under oath, your testimony is very  
3 important today. Even though we're not in a  
4 courtroom, it's as important as if you were in a  
5 courtroom. So if you were to answer the question  
6 one way today and answer it differently at trial,  
7 you could be confronted with the discrepancy. Do  
8 you understand that?

9 A Yes.

10 Q So that's the reason we don't want  
11 you to guess, because you might guess in good  
12 faith one way today and differently later and now  
13 there's a discrepancy. That's the reason for  
14 that instruction. Okay?

15 A Okay.

16 Q Mr. Stein may object from  
17 time-to-time to some of my questions, although he  
18 tends to object more to Mr. Leuchtmann's questions  
19 than mine. If he does, let him put his position  
20 on the record and he'll tell you what to do. The  
21 chances are you'll be permitted to answer the  
22 question in all likelihood. So listen to the  
23 question and, even though we have an objection,  
24 most likely you'll answer it, but you'll abide by  
25 his instructions. Okay?

M. Grossbaum - Direct

6

1 If you need any question repeated, you can  
2 ask to have it read back. If there's any  
3 question that you don't understand, let me know  
4 that and I will endeavor to rephrase it so that  
5 you do understand it. Okay?

6 You didn't answer and that brings me to my  
7 next one. You need to answer --

8 A Okay.

9 Q -- every question with a verbal  
10 response. You did nod your head just before.

11 A Right.

12 Q But nods of the head can be  
13 ambiguous, and all we end up with after this is a  
14 written transcript. You're not on a video. No  
15 one can see you nodding.

16 A Right.

17 Q So you need to answer verbally and  
18 you need to use a word rather than uh-hum  
19 because uh-hum and uh-uh are probably spelled the  
20 same, although they sound different. So yes and  
21 no or any other word is required. And if you  
22 forget to do that, hopefully one of us lawyers  
23 here will remind you that you need to answer  
24 verbally. Okay?

25 A Okay.

M. Grossbaum - Direct

7

1 Q If you do answer any question, and  
2 you'll be answering a lot of them, I'll assume  
3 two things; one, that you understood it, and,  
4 two, that your answer is truthful. Okay?

5 A Okay.

6 Q Do you have any questions about  
7 those instructions for me before we start?

8 A No.

9 Q Have you ever testified under oath  
10 in your life before right now?

11 A No.

12 Q Have you ever been a party to a  
13 lawsuit other than this one?

14 A No.

15 Q By party I mean did you ever bring  
16 a lawsuit or were you ever sued before?

17 A No.

18 Q You were born January 1, 1980?

19 A Yes.

20 Q So let me do the math. You are  
21 29?

22 A Correct.

23 Q That's why I'm a lawyer. I'm not  
24 really very good at math. I understand that you  
25 are a self-employed locksmith?

M. Grossbaum - Direct

8

1 A Correct.

2 Q And the name of your company is  
3 what?

4 A Emco Security Incorporated.

5 Q Did you start that company?

6 A Yes.

7 Q When? What year?

8 A I don't remember.

9 Q Can you estimate for us how long  
10 that's been in existence, although not exactly?

11 A A few years. Three, four, five  
12 years.

13 Q Was that you -- did you have that  
14 company before Rosie was born?

15 A I don't remember.

16 Q Before starting this company, did  
17 you work as a locksmith?

18 A Yes.

19 Q And where did you work before this?

20 A I worked for myself, but I didn't  
21 have a company at that time.

22 Q For how long have you been working  
23 as a locksmith for yourself, since about what  
24 year?

25 A Since I got married.

M. Grossbaum - Direct

9

1 Q And when was that?

2 A Seven years, August 2002.

3 Q And where is your company located?

4 A New York.

5 Q Where in New York?

6 A The address is in New York. I'm  
7 mainly a mobile locksmith.

8 Q So you go where they call you to  
9 go?

10 A Right.

11 Q Where is your clientele?

12 A Wherever the calls come in.

13 Q So just to give me an idea, I'm  
14 not --

15 A I've done work in New York as well  
16 as New Jersey.

17 Q And your wife said that you and she  
18 are the only employees?

19 A Correct.

20 Q So you do all the work and she  
21 handles the paperwork?

22 A Pretty much.

23 Q Is this your only marriage?

24 A Yes. What do you mean by only?

25 Q Meaning --

M. Grossbaum - Direct

10

1 A Do I have another one on the side?

2 Q No, whether or not you could have  
3 been married before this.

4 A No.

5 MR. LEUCHTMAN: Either way, before  
6 or during.

7 Q At the present time, do you and  
8 your wife have any plans or any decision made as  
9 to whether you do or do not want to have more  
10 children in your family?

11 A We want to have more children. We  
12 don't have any plans yet.

13 Q Okay. So is it fair to say is that  
14 something you've discussed since Rosie was born?

15 A We discussed it, but that's pretty  
16 much about as far as it goes.

17 Q So the two of you are on the same  
18 page that you'd like to have more children, but  
19 there's nothing specific yet?

20 A Yes.

21 Q And I gather you're both young so  
22 you figure you have plenty of time to get  
23 specific at some point. Is that fair to say?

24 MR. STEIN: I take it your  
25 question, by getting specific, means making

M. Grossbaum - Direct

11

1 concrete plans.

2 MR. EICHHORN: Exactly.

3 MR. STEIN: To have a child.

4 A We would like to.

5 Q And have you decided when you do  
6 endeavor to do that how you will go about doing  
7 it?

8 A No. That's what we haven't thought  
9 about yet.

10 Q So is that you haven't decided what  
11 method to use yet to get pregnant again?

12 A We haven't even researched much of  
13 what our options are. We haven't put them on the  
14 table to make a decision.

15 Q So have you and Chaya had any  
16 discussions about the different methods for you  
17 to get pregnant and the pros and cons now that  
18 you've already had Rosie?

19 A Not in that state of having pros  
20 and cons and weighing each one out. Just more of  
21 we'd like to have it and we have to come up with  
22 something, some way or something that we can do.

23 Q So then would it be fair to say you  
24 haven't really focused on the details of it yet?

25 A Correct.

M. Grossbaum - Direct

12

1 Q Okay. As we know, you and your  
2 wife are both CF carriers. As a result of that  
3 knowledge, when you decided to get pregnant, tell  
4 us what discussion you and Chaya had about what  
5 method you would choose to get pregnant and have  
6 a child.

7 A Well, we met with the rabbis and we  
8 were directed or suggested to do the whole IVF  
9 and so on, and that was pretty much what we did.

10 Q When you say you met with the  
11 rabbis, now, if I remember correctly, and I do  
12 have notes from when I deposed your wife, she  
13 said that this was not an issue that you  
14 discussed with the rabbi at the synagogue a mile  
15 away from your home.

16 A No.

17 Q Because she said you don't have a  
18 personal relationship with him. Is that right?

19 A No. Correct.

20 Q So is it correct that you got in  
21 touch with Rabbi Zalman Markowitz and he put you  
22 in touch with Rabbi Aaron Jacobowitz?

23 A Correct.

24 Q And when you say you spoke to the  
25 rabbis and IVF was suggested, was it Rabbi

M. Grossbaum - Direct

13

1 Jacobowitz who suggested the IVF?

2 A No, it wasn't Jacobowitz. First we  
3 met with Tendler.

4 Q Before you met with Jacobowitz, you  
5 met with Rabbi Tendler?

6 A Correct.

7 Q How did you learn about him?

8 A About who?

9 Q Rabbi Tendler. How did you learn  
10 about him?

11 A Through Rabbi Markowitz.

12 Q And did you meet with Rabbi Tendler  
13 in person or talk to him over the phone?

14 A Spoke to him in person.

15 Q Where did you see him?

16 A Either in his office or in his  
17 home.

18 Q You don't recall where?

19 A No.

20 Q Do you know where he works?

21 A In Monsey.

22 Q At a synagogue?

23 A I believe so.

24 Q Is he the head rabbi of the  
25 synagogue?

M. Grossbaum - Direct

14

- 1 A I don't know.  
 2 Q What had you learned about him from  
 3 Rabbi Markowitz that led you to go to see him?  
 4 A That he's familiar with these types  
 5 of things.  
 6 Q When you say "these types of  
 7 things --"  
 8 A Meaning genetic type of stuff.  
 9 Q And when you spoke to Rabbi Tendler  
 10 was it he, Rabbi Tendler, you and your wife?  
 11 A It was Rabbi Markowitz was there  
 12 and then another rabbi, Rabbi Solomon was there  
 13 as well.  
 14 Q Who is Rabbi Zalman?  
 15 A Solomon.  
 16 Q Solomon. Sorry.  
 17 A He's a basically a friend of ours.  
 18 Q And you said Rabbi Jacobowitz was  
 19 there?  
 20 A No.  
 21 Q No. So Rabbi Tendler, Rabbi  
 22 Solomon, you and your wife?  
 23 MR. STEIN: And Markowitz.  
 24 A Correct.  
 25 Q Oh, Markowitz. I'm sorry.

M. Grossbaum - Direct

16

- 1 Q Is Lubavitch a very conservative  
 2 orthodox sect?  
 3 A What do you mean?  
 4 Q Well, as opposed to -- well, let me  
 5 ask you.  
 6 A Long coats, long pants, everything?  
 7 Q No. But I mean, is there a  
 8 difference to you between calling someone a  
 9 conservative orthodox and a moderate or centrist  
 10 orthodox? Do those terms have meaning to you?  
 11 A No.  
 12 Q Let me ask you this then: If you  
 13 are Lubavitch, why did you not go to a Lubavitch  
 14 rabbi to get advice on these issues?  
 15 A Because when it comes to certain  
 16 things, you go to professionals that know about  
 17 the stuff instead of going to somebody you know.  
 18 Also we went to Rabbi Solomon and Rabbi Markowitz  
 19 are both Lubavitch and they both recommended to  
 20 us to go to Rabbi Tendler because he's informed  
 21 on the stuff.  
 22 Q Who brought up the issue of  
 23 abortion at that meeting?  
 24 A I don't remember.  
 25 Q Do you remember any other

M. Grossbaum - Direct

15

- 1 A Right.  
 2 Q So what was the discussion? Did  
 3 you go to Rabbi Tendler to ask him for advice?  
 4 A Pretty much.  
 5 Q And what was the substance of the  
 6 discussion?  
 7 A What our options were that  
 8 basically I believe that Markowitz or Rabbi  
 9 Solomon pretty much gave the -- what the story  
 10 was and that was pretty much where it went.  
 11 Q And what was Rabbi Tendler's advice  
 12 to you?  
 13 A Basically that abortion was brought  
 14 up and he put that down. And it was pretty much  
 15 I believe the IVF.  
 16 Q Did you and your wife ask Rabbi  
 17 Tendler for permission for her to use birth  
 18 control?  
 19 A I don't remember.  
 20 Q Now, you and your wife are  
 21 Lubavitch, correct?  
 22 A Correct.  
 23 Q Rabbi Tendler, he's not Lubavitch,  
 24 correct?  
 25 A Correct.

M. Grossbaum - Direct

17

- 1 information that Rabbi Tendler conveyed to you  
 2 and your wife other than that abortion was out  
 3 and that he recommended IVF? Do you remember  
 4 anything else?  
 5 A No.  
 6 Q Do you recall about how long that  
 7 meeting was?  
 8 A No.  
 9 Q Was this before or after you were  
 10 married?  
 11 A Before.  
 12 Q Can you tell me -- you were married  
 13 in 2002, correct?  
 14 A Correct.  
 15 Q So can you tell me the approximate  
 16 year that you met Rabbi Tendler?  
 17 A I can guess before that. I don't  
 18 know when.  
 19 Q You know it was before that, but  
 20 you can't say when?  
 21 A Right.  
 22 Q Did you ever meet with Rabbi  
 23 Tendler again?  
 24 A No.  
 25 Q Ever speak with him again?



M. Grossbaum - Direct 18

1 A I don't think so.

2 Q And did your wife ever meet with or

3 speak with him again, to your knowledge?

4 A I don't think so.

5 Q Did you have any more specific

6 discussion with Rabbi Tendler such as, other than

7 the fact that abortion was out and recommending

8 IVF, did you ask him about other testing, whether

9 he would or would not allow her to have it?

10 A I don't remember.

11 Q So after that meeting, did you and

12 your wife decide that when you would try to

13 become pregnant you would use the IVF method?

14 A Correct.

15 Q And did you have an understanding

16 back then as to what your chances were of having

17 a CF baby if you and your wife were to get

18 pregnant naturally?

19 A Yes.

20 Q What was your understanding?

21 A One in 25.

22 Q You mean 25 percent?

23 A Twenty-five percent.

24 Q One in four?

25 A One in four, right.

M. Grossbaum - Direct 19

1 Q When you spoke to Rabbi Tendler,

2 did he give you any names of particular either

3 doctors or centers where you could go for either

4 IVF or PGD testing?

5 A I don't think so. I don't know.

6 Q When Rabbi Tendler recommended IVF,

7 was the issue of PGD testing part of that

8 recommendation?

9 A Yes.

10 Q So what was your understanding as

11 to the potential benefit of using IVF and PGD

12 based upon your discussion with Rabbi Tendler?

13 A That it would bring down the risk

14 of having a child with CF.

15 Q Now, did there come a time when you

16 and Chaya decided to start trying to have a

17 child?

18 A What do you mean by that?

19 Q Well, in other words, she told me

20 that she was on the pill. So do you remember her

21 saying that?

22 A Okay.

23 Q Well, okay, let me do it this way.

24 Do you remember whether or not your wife was on

25 the pill?

M. Grossbaum - Direct 20

1 A Yes, she was.

2 Q So was she on the pill in order to

3 not get pregnant?

4 A Yes.

5 Q Did there come a time when the two

6 of you decided to have her stop using the pill?

7 A Yes.

8 Q Was that because the two of you

9 decided that you wanted to start a family?

10 A Yes.

11 Q So did you and your wife ask about

12 places that you could get IVF and PGD from

13 anyone?

14 A No. We were referred.

15 Q Who referred you?

16 A Between Rabbi Markowitz and Rabbi

17 Jacobowitz, that's where we got our referrals

18 from.

19 Q So you and your wife had

20 discussions with these two rabbis in which they

21 gave you names of somewhere or some places you

22 could go to to get IVF and PGD?

23 A Place, yes.

24 Q Place. What were you told?

25 A That NYU did it. And that's where

M. Grossbaum - Direct 21

1 Rabbi Jacobowitz was the masgiach.

2 Q So these rabbis gave you the name

3 of NYU?

4 A Yes.

5 Q And you had an understanding that

6 Rabbi Jacobowitz had been involved with NYU

7 before?

8 A Correct.

9 Q In cases in infertility cases for

10 orthodox people?

11 A Yes.

12 Q Orthodox Jewish people?

13 A Yes.

14 Q Now, how did you learn of Dr. Mark

15 Hughes' name?

16 A Dr. Liccardi at NYU.

17 Q So did you and your wife contact

18 NYU at any time before she learned she was

19 pregnant or after?

20 A NYU?

21 Q You're right. I'm sorry. That

22 was -- I had a mind freeze.

23 Tell me when you and your wife first got

24 in touch with NYU.

25 A Date wise?



M. Grossbaum - Direct

30

- 1 A Yes.
- 2 Q So and was Dr. Hughes presumably,
- 3 to your understanding, at his office in Michigan?
- 4 A I don't know.
- 5 Q So did you and your wife have a
- 6 speaker phone that you could both hear at the
- 7 same time or was it a regular phone?
- 8 A Maybe two different hand sets.
- 9 Q Do you remember where you were when
- 10 you spoke with Dr. Hughes?
- 11 A In our apartment.
- 12 Q And do you have more than one hand
- 13 set to your phone there?
- 14 A I guess so.
- 15 Q I don't mean to be --
- 16 A I don't remember -- I believe we
- 17 did. I don't remember. I think we were on two
- 18 different hand sets. I can't say for sure.
- 19 Q Is it your recollection that you
- 20 and your wife were both involved in that
- 21 conversation with Dr. Hughes?
- 22 A Yes.
- 23 Q And did both of you participate and
- 24 say something during that discussion?
- 25 A Yes.

M. Grossbaum - Direct

32

- 1 certain things that they were dealing with, eggs
- 2 and cells and with your wife's body, and did you
- 3 have an understanding that those manipulations
- 4 did carry a risk of damage to the fetus?
- 5 A Yes.
- 6 Q And you accepted that risk?
- 7 A That was the only way we could get
- 8 pregnant.
- 9 Q So you accepted the risk?
- 10 A Yes.
- 11 Q And you accepted the IVF procedure
- 12 understanding that it could fail?
- 13 A Yes.
- 14 Q And you accepted the PGD testing
- 15 understanding that it could make an error?
- 16 A Yes.
- 17 Q Did you also have an understanding
- 18 that the things required in order to achieve an
- 19 IVF pregnancy could result in injury to your wife
- 20 as well?
- 21 A Repeat it.
- 22 Q Did you have an understanding that
- 23 the procedures and the medications necessary in
- 24 order to achieve a pregnancy through IVF did
- 25 create a risk of injury to your wife as well?

M. Grossbaum - Direct

31

- 1 Q And did both of you listen to what
- 2 Dr. Hughes was saying?
- 3 A Yes.
- 4 Q Other than him saying that PGD is
- 5 not 100 percent in terms of its ability to be
- 6 correct, do you remember him saying anything in
- 7 any more specifics about that other than it's not
- 8 100 percent?
- 9 A That he had a very high success
- 10 rate and that it pretty much was a regular thing.
- 11 I believe that he said that our mutations were
- 12 good to work with, and that he's very confident
- 13 in the procedure.
- 14 Q Do you remember whether you or your
- 15 wife, when she was in your presence, ever had any
- 16 discussion with anyone at NYU about the success
- 17 rates of PGD testing?
- 18 A I don't know.
- 19 Q Did you have an understanding that
- 20 the various things that needed to be done as part
- 21 of the IVF procedure created a potential risk to
- 22 the fetus, hopefully to become child?
- 23 A What do you mean?
- 24 Q In other words, did you have an
- 25 understanding that they needed to manipulate

M. Grossbaum - Direct

33

- 1 A I don't know. I mean, I don't
- 2 recall.
- 3 Q Let me just show you this document
- 4 we just referred to, Grossbaum-1, and do you see
- 5 in addition to the signature on the last page
- 6 that there are a set of initials at the bottom
- 7 right of each page? Could you just confirm for
- 8 me that those are your and your wife's initials
- 9 at the bottom of each page?
- 10 A Yes.
- 11 Q And I'll just show you page 2 --
- 12 actually page 3. And, again, I'm not going to go
- 13 through all of these, but the bottom where it
- 14 says No. 3, from the corticosteroids, this is
- 15 under the portion dealing with potential risks
- 16 that could happen, you see it says vaginal
- 17 infection, impaired wound healing, increases in
- 18 blood pressure, hypersensitivity reactions
- 19 resulting in shock, blood diseases, mood swings,
- 20 vertigo, insomnia, psychotic manifestations and
- 21 depression, loss of muscle mass, osteoporosis?
- 22 You see all those things listed there as
- 23 potential, although highly unlikely?
- 24 A Yes.
- 25 Q So does this refresh your memory

M. Grossbaum - Direct

42

1 every single thing that we specifically did not  
2 want to go through those and that we were not and  
3 that was the reason why we went through  
4 everything.

5 Q What do you mean you threw out  
6 everything single document? I don't know what  
7 you mean.

8 A You went through with my wife many  
9 documents.

10 Q Right.

11 A Every single one, why she did and  
12 why she didn't. I'm saying the same. Basically  
13 we stressed that we were not going to be doing  
14 that, and that's why we're doing the IVF.

15 Q Let me ask you this: When did you  
16 first -- strike that.

17 When did you first learn that part of the  
18 IVF PGD process was undergoing an amnio or a CVS?

19 A Probably at that time when we  
20 discussed that we weren't going to do it.

21 Q But --  
22 MR. STEIN: When at that time?  
23 With whom?

24 Q When was that?

25 A I don't remember.

M. Grossbaum - Direct

43

1 Q Can you remember whether that was  
2 at the first -- let just finish, and I don't mean  
3 to be rude, but I'll finish and then you can  
4 answer it however.

5 Do you remember whether that was at the  
6 first meeting with Dr. Liccardi or whether it was  
7 when you spoke with Dr. Hughes or some other  
8 time?

9 A No. The first thing we did, we  
10 spoke to Dr. Liccardi and that's when we spoke to  
11 him about that.

12 Q So my question is did you learn at  
13 that first discussion with Dr. Liccardi that an  
14 amnio or a CVS was part of the process?

15 A I vaguely remember that. I can't  
16 remember specifically. I remember that we --  
17 that's one of the things that we discussed that  
18 we were not going to be doing. That's why we're  
19 doing the IVF.

20 Q Well, if you told Dr. Liccardi, for  
21 example, that your wife would not undergo either  
22 of these tests, I assume you would have said that  
23 because you learned that they were part of the  
24 process. Am I right?

25 A Right.

M. Grossbaum - Direct

44

1 Q So in order for you to say, we're  
2 not doing that, it was because you learned that  
3 that test was part of it?

4 A Right.

5 Q And am I correct your recollection  
6 is that this issue of amnio and CVS was discussed  
7 at the first meeting with Dr. Liccardi?

8 A I believe so.

9 Q Are you sure of that?

10 A I don't remember specifically. I  
11 believe so.

12 Q And what person or people did you  
13 and your wife tell that she would not be  
14 undergoing either of these tests?

15 A I don't remember. My wife was  
16 dealing with these types of things because she  
17 would be the one going through it. So I don't  
18 remember. I don't know who she spoke to about  
19 it.

20 Q So then I'll ask for you. What  
21 person or people, if any, did you tell, my wife  
22 won't go for either of these tests?

23 A I don't know.

24 Q Is it possible you didn't, you  
25 yourself, didn't tell anyone that?

M. Grossbaum - Direct

45

1 A I wouldn't say throughout the whole  
2 process I wouldn't say, but to other friends or  
3 family, I didn't speak to any friends or family  
4 about that.

5 Q I'm just asking about the doctors,  
6 the people at the IVF center.

7 A I don't remember specifically if I  
8 was the one or my wife was the one who voiced it.  
9 Most probably my wife.

10 Q So then it's possible that you  
11 yourself didn't tell anyone that?

12 A Possible.

13 Q Do you remember whether that issue  
14 of amniocentesis and CVS and whether or not your  
15 wife would go for them, do you remember whether  
16 that issue came up in the conversation with  
17 Dr. Hughes?

18 A I don't recall.

19 Q Do you recall whether that issue  
20 came up in discussion with anyone else at the IVF  
21 center other than Dr. Liccardi?

22 A Throughout the tests and form  
23 shoving, if you want to call it that, every  
24 single time it was written up or brought up on  
25 the form it had to be done, my wife probably

M. Grossbaum - Direct

46

1 volced an opinion.

2 Q Okay. My question though right now  
3 is are you aware of your wife telling any  
4 particular people at the center, other than Dr.  
5 Liccardi, that she wouldn't go for either of  
6 these?

7 A Yes. There were other people that  
8 she said to it.

9 Q Do you know who any of those  
10 people were?

11 A No. There were many different  
12 people around the office.

13 Q Can you tell me if you know whether  
14 any of them were physicians like Dr. Liccardi?

15 A No. They didn't have any stripes  
16 on their shoulders.

17 Q Did you have an understanding as to  
18 what the roles were of any of these people, you  
19 know --

20 A No.

21 Q -- In other words, what doctor,  
22 nurse --

23 A No.

24 Q -- lab person?

25 A No.

M. Grossbaum - Direct

48

1 Q Now, so you're saying that -- okay.  
2 I want to explore for a second your rationale  
3 that it wouldn't serve any purpose. Okay? Just  
4 so you know where I'm going. You understood that  
5 if you got pregnant naturally you had a  
6 25 percent chance that your baby would have CF?

7 A Correct.

8 Q And you understood that by going  
9 for IVF and PGD testing the chances of you having  
10 a baby with CF were 2 or 3 percent, certainly  
11 less than 10 percent, correct?

12 A Correct.

13 Q So would you agree with me that in  
14 going for the IVF and the PGD you were reducing  
15 the chance of a CF baby from 25 percent down to 2  
16 or 3 or 4 percent?

17 A Yes.

18 Q Now, was there any religious  
19 aspects to that decision or was it just the  
20 reason you gave me?

21 A What do you mean?

22 Q In other words, your decision that  
23 your wife wouldn't undergo either of these tests,  
24 was that at all religiously based or was it just  
25 for the reason you told me?

M. Grossbaum - Direct

47

1 Q And although you may not have been  
2 the one who said it, assuming it was your wife  
3 that said it, what was the reason for not  
4 agreeing to undergo either amnio or CVS?

5 A That we were recommended.

6 Q I don't know what you mean.

7 A Basically anything that would --  
8 because it wouldn't make a difference. What  
9 would be the point of doing if you weren't going  
10 to have an abortion?

11 Q So your reason was there's no  
12 reason for it because if I'm not going to choose  
13 to have an abortion, it doesn't serve any  
14 purpose?

15 A Right, partially.

16 Q Partially to me means there's  
17 something else.

18 A Basically anything that's not  
19 necessary for -- since we wouldn't be having an  
20 abortion, so that's why we wouldn't be doing it.  
21 If we wouldn't be having an abortion, then it's  
22 not necessary.

23 Q You told me that. Was that the  
24 only reason?

25 A Right.

M. Grossbaum - Direct

49

1 A In general pregnancy, anything  
2 that's not necessary to go through, religiously  
3 we don't do any of that stuff.

4 Q So my question is did religion play  
5 any role in your decision here or was it just the  
6 reason you gave me before?

7 A Well, of course, it has religion.  
8 If we're not going to have an abortion, then  
9 that -- we wouldn't have an abortion because of  
10 religious purposes. So that's where it all stems  
11 from.

12 Q Now, what about the fact that --  
13 what about the idea that by going for testing you  
14 could learn whether or not there had been an  
15 error and you could know in advance that you were  
16 going to have a CF baby? Although you wouldn't  
17 be aborting that baby, do you agree that that  
18 would give you and your wife time to become  
19 emotionally prepared for that?

20 A That would be a living hell.

21 Q A living hell to know in advance?

22 A A hundred percent. If you knew you  
23 had a child that had an issue and that basically  
24 you're waiting for your life to merge into a hell  
25 and like a time bomb, would you await that

M. Grossbaum - Direct

50

1 pregnancy or would you dread the day that the kid  
2 was born?

3 Q So are you saying then that --

4 A That's what I'm asking.

5 Q I understand. So are you saying  
6 then, in your frame of mind, it would be worse to  
7 know it and have time to prepare for it than to  
8 suddenly learn it at birth?

9 A Yes.

10 MR. STEIN: Just a note, you used  
11 the term time to prepare for it. That's a  
12 concept that has not been defined. So although  
13 he answered the question, if posed again I would  
14 object to it on that basis.

15 MR. EICHHORN: I think he knew  
16 emotionally.

17 Q Did you understand that I meant  
18 emotionally prepare for it?

19 A Yeah.

20 Q And you gave me your answer?

21 A (The Witness nods in the  
22 affirmative.)

23 MR. STEIN: Again, the objection  
24 still stands that how do you emotionally prepare  
25 has not been defined.

M. Grossbaum - Direct

51

1 MR. LEUCHTMAN: Suppose we change  
2 that to get used to the idea, would your answer  
3 still be the same?

4 MR. STEIN: Get used to an idea?

5 THE WITNESS: What is -- translate  
6 get used to the idea.

7 MR. LEUCHTMAN: To become  
8 accustomed to the fact that you were going to  
9 have a child with CF.

10 THE WITNESS: I mean, what do you  
11 do? If you're dealing with a cup of water, for  
12 instance, you can see if the cup is cold or hot.  
13 When you have a child that you don't know where  
14 it is and CF has a spectrum of a tremendous  
15 amount of things where you could be at any part  
16 of the spectrum, you're just throwing a line into  
17 an open pond and seeing what you pull out. All  
18 that's going to do to you is just make you go  
19 miserable.

20 MR. LEUCHTMAN: You've answered my  
21 question. Thank you.

22 Q Let me ask you, given that the last  
23 sentence we just read from this consent form  
24 marked Grossbaum-3 was the one talking about the  
25 fact that amniocentesis or CVS are required, why

M. Grossbaum - Direct

52

1 did you initial this page and sign this document  
2 and not delete or redact or put a line through  
3 that sentence?

4 A With all the documents, had we  
5 known that we were able to cross things out, we  
6 would have. I never knew or we never knew that  
7 we could just cross something out and say we  
8 don't agree to that.

9 Q Who was with you at the hospital  
10 dealing with these documents? Do you remember?

11 A Well, besides for my wife and I?

12 Q Yes. Who from the IVF center was  
13 with you dealing with --

14 A Each one was different. You know,  
15 the nurse or doctor or whoever had the lab coat  
16 on at that time.

17 Q So it was always different people?

18 A For the most part I believe so.

19 Q I'm going to show you another  
20 document which was marked Grossbaum-4 at your  
21 wife's first deposition, five pages, and there's  
22 a signature page at the end, and then along the  
23 way, as opposed to those other forms which had a  
24 place at the bottom, this form has areas within  
25 the pages themselves for initials. Could you

M. Grossbaum - Direct

53

1 look through and tell me whether you signed and  
2 dated this form and whether all the initials that  
3 appear under the word man are yours and under  
4 woman are your wife's?

5 A Yes.

6 Q In looking at this form, does this  
7 look at all familiar to you?

8 A I don't remember any of the forms.

9 Q So do you remember a form where you  
10 were actually putting your initials in the body  
11 of it rather than at the bottom?

12 A I don't recall.

13 Q No memory at all of doing that?

14 A No.

15 Q Was it your understanding that your  
16 religion prohibited your wife from going for an  
17 amnio or CVS?

18 A Yes.

19 Q What was the basis for that?

20 A That any, like I explained to you  
21 earlier.

22 Q What? Anything that's not used in  
23 order to achieve the pregnancy you don't do?

24 A Or anything that's not necessary  
25 for the pregnancy.



M. Grossbaum - Direct

54

- 1 Q Did any rabbi or rabbinical  
2 authority tell you that or is that your own --  
3 A Personally to myself?  
4 Q To you or to your wife.  
5 A No. That's just a known thing that  
6 everybody knows.  
7 Q Your wife brought up the name --  
8 A I can't say everybody because if  
9 you don't know, it's not everybody. It's a  
10 general.  
11 Q Last time your wife brought up the  
12 name of Rabbi Menachem Mendel Schneerson.  
13 A Right.  
14 Q Do you know who he was?  
15 A Yes.  
16 Q And what role does he have in  
17 Lubavitch orthodox Jewish sect?  
18 A In the Lubavitch sect there were  
19 seven head rabbis throughout generations and he  
20 was the one in our generation.  
21 Q And is it your understanding  
22 that -- has he ever said or written anywhere that  
23 you've read that you can't undergo a test like  
24 the amniocentesis or the CVS?  
25 A I can't tell you specifically that

M. Grossbaum - Direct

56

- 1 Q Well, first of all, who removed the  
2 eggs?  
3 A I don't know.  
4 Q Was there anyone else present?  
5 A I believe Jacobowitz may have been  
6 there, but I don't remember.  
7 Q And did you have an understanding  
8 of what was going to happen with those eggs once  
9 they were removed?  
10 A Yes.  
11 Q What was your understanding?  
12 A That they would mix the sperm and  
13 the egg and then ship it off to Dr. Hughes.  
14 Q And then did you receive a phone  
15 call at some point after that to go back to the  
16 IVF center or for your wife to go back?  
17 A For what?  
18 Q To have the embryos reimplanted?  
19 MR. STEIN: How about implanted?  
20 Q Well, they've been taken out --  
21 okay, implanted.  
22 A I guess at some point there they  
23 contacted us. I don't remember how or when.  
24 Q So you figure it had to happen, but  
25 you don't remember it as you sit here?

M. Grossbaum - Direct

55

- 1 I can show you a page, but he's written many,  
2 many things about all this, you know, all this  
3 kind of stuff.  
4 Q When you say this kind of stuff,  
5 can you be more specific?  
6 A As in childbearing and things like  
7 that.  
8 Q Now, when did Rabbi Schneerson die?  
9 A '94.  
10 Q And is there someone who has taken  
11 his place in the sense of giving opinions on  
12 medical issues as they relate to your Jewish  
13 belief?  
14 A No.  
15 Q After that first meeting with Dr.  
16 Liccadi, when is the next time you can remember  
17 being at the IVF center yourself?  
18 A For testing and things like that.  
19 Q Do you remember -- strike that.  
20 Were you there the day that the eggs were  
21 removed from your wife?  
22 A Yes.  
23 Q And who was there that day other  
24 than you and your wife?  
25 A What do you mean?

M. Grossbaum - Direct

57

- 1 A Right.  
2 Q Now, during this period of time  
3 from March when you first saw Dr. Liccadi up  
4 through the day of implantation, were you and  
5 your wife having normal sexual relations?  
6 A Up to when?  
7 Q From the --  
8 A Meeting Dr. Liccadi?  
9 Q Meeting Dr. Liccadi up through the  
10 time that the embryos were implanted.  
11 A No. There were times that they  
12 told us we weren't allowed to. Then those were  
13 the times we didn't.  
14 Q So when were those times that you  
15 didn't?  
16 A I don't remember.  
17 Q So you don't remember the details  
18 of when you didn't, but other than when you were  
19 told not to, you were having normal sexual  
20 relations?  
21 A Depends on the day.  
22 Q Your wife was not on the pill?  
23 A Right.  
24 Q And I'm not trying to get personal  
25 with this question, but can you estimate for me

M. Grossbaum - Direct

58

1 approximately how many times a week you were  
2 having normal sexual relations during that time?

3 A I have no idea.

4 MR. STEIN: During what time? I  
5 object to the form.

6 Q During this time frame other than  
7 when you were told not to.

8 A I don't know.

9 Q Well, can you estimate for me?

10 A No.

11 Q You don't remember?

12 A I don't remember.

13 Q When your wife had the embryos  
14 implanted, were you there?

15 A Yes.

16 Q Who else was there?

17 A Dr. - Rabbi Jacobowitz.

18 Q Who implanted them?

19 A I don't know. I think Dr.

20 Llicardi.

21 Q Did you and your wife have any  
22 discussion with Dr. Llicardi that day before he  
23 implanted the embryos?

24 A Yes.

25 Q And what did that discussion

M. Grossbaum - Direct

59

1 consist of?

2 A He went through the different  
3 styles of the embryos that he had or that were  
4 available, which were good and stuff like that.

5 Q Can you tell me with any more  
6 specificity than that what he said?

7 A He said that one of them was not  
8 affected, you know, was no carrier, and he said  
9 that one of them was a carrier.

10 Q Okay. Well, you've mentioned two.  
11 Did you have an understanding as to how many  
12 embryos there were that they had tested?

13 A I don't remember, eight, nine, 10.  
14 I don't remember, 14, 13. I don't remember.

15 Q So what did he say about the group  
16 of embryos?

17 A Some of them were good or a couple  
18 of them were good, and the rest of them were not  
19 developed enough to implant.

20 Q So putting aside the ones that were  
21 not developed enough, do you remember anything  
22 specific he told you about the ones that were  
23 developed enough?

24 A Basically I remember about two of  
25 them, the two that we were implanting. One of

M. Grossbaum - Direct

60

1 them was not a carrier, and the other, second  
2 one, was a carrier but did not carry the disease.  
3 It was not a double carrier, if you want to call  
4 it that.

5 Q You said that one of them was not a  
6 carrier?

7 A Meaning one of them was plain,  
8 regular.

9 Q What do you mean by regular?

10 A Was not a carrier for cystic  
11 fibrosis.

12 Q So that it had - it was completely  
13 devoid of CF. It didn't have it and it didn't  
14 carry it either. There was none?

15 A Correct.

16 Q And the other one?

17 A Was just a carrier.

18 Q So after telling you that, what was  
19 the rest of the discussion?

20 A That was pretty much it. Let's do  
21 it.

22 Q Well, your wife testified that she  
23 said - this is what she said - they said some  
24 of the embryos that he tested that were good  
25 embryos had CF and there were some good ones that

M. Grossbaum - Direct

61

1 did not have CF but they were carriers for CF.  
2 Did we want to use them and we said yes.

3 A They were carriers, correct.

4 Q So I'm just trying to make it - to  
5 clarify it because you said your recollection is  
6 that one of them was completely clean, not even a  
7 carrier.

8 A I believe so.

9 Q Do you remember once Dr. Llicardi  
10 told you about the results, do you remember him  
11 asking you if you wanted to have these two  
12 implanted?

13 A Yes.

14 Q And you and your wife said what?

15 A Yes. If they were not affected,  
16 then that's what we were basing it on, yes.

17 Q So you and your wife, your position  
18 was as long as they're not CF, meaning that our  
19 child will have CF, then it's okay?

20 A Yes.

21 Q So the implantation was done that  
22 day?

23 A Yes.

24 Q And Rabbi Jacobowitz was there?

25 A Yes.

M. Grossbaum - Direct

62

1 Q He was there as the -- I'll butcher  
2 the pronunciation.

3 MR. STEIN: Masgiach.

4 Q Masgiach. He was there in that  
5 role, to make sure that the embryos that were  
6 implanted into your wife were hers?

7 A Yes.

8 Q After that day, did you go back to  
9 NYU at all?

10 A Couple times. Sometimes I would  
11 drop her off and then wait in the car because  
12 there's no parking or lack of parking.

13 Q Did you ever speak to any of the  
14 doctors at NYU again after that day?

15 A I don't recall. I mean, possibly.  
16 I don't remember.

17 Q And once your wife started her  
18 prenatal care at Midwives of Denville, from that  
19 time on did you ever speak to anyone at NYU  
20 again?

21 A I don't think so.

22 Q Were you involved in going to your  
23 wife's prenatal visits at Midwives of Denville?

24 A I think I had to go once. I think  
25 that just for childbirthing thing.

M. Grossbaum - Direct

63

1 Q Was it your understanding that your  
2 wife was -- had one or more ultrasounds done  
3 while she was at Midwives?

4 A I don't know how many she had over  
5 there.

6 Q But did you know that she had at  
7 least -- she had them done, some number of them?

8 A I guess so.

9 Q I don't want to tell you.

10 A I don't know. I don't know how  
11 many she had.

12 MR. STEIN: Then say it. If you  
13 don't know, you don't know.

14 Q So back at the time you were not  
15 aware -- you don't remember whether you were  
16 aware she was undergoing ultrasounds?

17 A Yes.

18 MR. EICHHORN: Steve, do you have  
19 any questions on liability before I must have on?

20 MR. LEUCHTMAN: Yes, I do.

21 MR. EICHHORN: We might as well do  
22 it that way, right?

23 MR. STEIN: No objection.  
24  
25

M. Grossbaum - Cross

64

1 CROSS-EXAMINATION BY MR. LEUCHTMAN:

2 Q You may not remember the date  
3 exactly, do you recall having the telephone  
4 conversation that you spoke of earlier with your  
5 wife and Dr. Hughes?

6 A Yes.

7 Q And does March 25, 2004 sound right  
8 to you?

9 A Okay.

10 Q Okay. I guess that means yes. You  
11 wouldn't disagree it was March 24th?

12 A I don't remember the date, so I  
13 can't say for sure.

14 Q Now, I want to go through a list  
15 of things that are mentioned in a form called  
16 precase phone review of PGD informed consent  
17 which was Exhibit 5 in your wife's deposition.  
18 Before I do that though, I'll ask you have you  
19 ever seen this form?

20 A Yes.

21 Q When did you first see it?

22 A When we got started with Mr. Stein.

23 Q Do you recall being told by Mark  
24 Hughes that he was not your physician, that there  
25 wasn't a physician/patient relationship between

M. Grossbaum - Cross

65

1 him and either you or your wife?

2 A Yes.

3 Q Do you recall being told that the  
4 technology involved was not perfect?

5 A Yes.

6 Q Do you recall being told that what  
7 was being done was, at least to some degree, an  
8 experimental process?

9 A To some extent. He said it was an  
10 experimental process and in the same breath  
11 saying that he's very confident in the procedure.

12 Q Do you recall being told that the  
13 objective of the procedure was to lower the risk  
14 from a risk of 25 percent?

15 A Yes.

16 Q Do you recall being told that zero  
17 risk was, and I'm quoting, "not realistic or  
18 possible"?

19 A Yes.

20 Q Do you recall being told that the  
21 technology could fail?

22 A I don't recall.

23 Q Do you recall being told that  
24 Dr. Hughes did not regard himself or his lab as  
25 perfect?



M. Grossbaum - Cross

66

- 1 A I don't recall.
- 2 Q Do you recall being told that the
- 3 technology to determine whether genes carried
- 4 cystic fibrosis had produced errors?
- 5 A Yes, eleven or something, 11 in a
- 6 number of years, hundreds of cases.
- 7 Q Do you recall being told that, and
- 8 again I'm quoting, "Conventional prenatal
- 9 testing, chorionic villus sampling at around 10
- 10 weeks or amniocentesis at around 15 to 16 weeks,
- 11 is necessary"?
- 12 A I don't recall.
- 13 Q Do you recall representing to
- 14 Dr. Hughes, you and your wife representing to
- 15 him, that all of your questions had been answered
- 16 in the telephone conversation?
- 17 A I believe so.
- 18 Q Do you recall that your response to
- 19 the statement that you could just get pregnant
- 20 and have CVS or amnio being, and I'm quoting, "We
- 21 do not like those odds"?
- 22 A Yes.
- 23 Q Do you recall being told that the
- 24 testing was complicated?
- 25 A No.

M. Grossbaum - Cross

67

- 1 Q Do you recall being told that there
- 2 were 11 errors in 14 years?
- 3 A Yes.
- 4 Q Do you recall being told that there
- 5 was a need to follow up with CVS or
- 6 amniocentesis?
- 7 A No.
- 8 Q Do you recall any mention of a New
- 9 York physician named Evans?
- 10 A I don't recall.
- 11 Q And finally, do you recall being
- 12 told -- I'm sorry, do you recall telling
- 13 Dr. Hughes that you wanted to give some thought
- 14 to embryo donation before consenting to it?
- 15 A Yes.
- 16 Q And did you ultimately not consent
- 17 to embryo donation?
- 18 A Yes.
- 19 Q And I know Mr. Eichhorn showed you
- 20 what was Exhibit 4 to your wife's deposition, and
- 21 I think you told us you don't remember signing or
- 22 initialing it, but are those your signature and
- 23 initials?
- 24 A Yes.
- 25 Q Just so I'm sure, did you ever have

M. Grossbaum - Redirect

68

- 1 any conversation with Dr. Hughes other than the
- 2 one that the record reflects as having been in
- 3 March of 2004?
- 4 A I don't think so.
- 5 MR. LEUCHTMAN: Thanks. That's all
- 6 I have.
- 7 (Pause)
- 8
- 9 REDIRECT EXAMINATION BY MR. EICHHORN:
- 10 Q Before we get on to the starting
- 11 about Rosie a little bit, I just want to go over
- 12 this. So the odds of a 25 percent chance of you
- 13 having a CF baby were unacceptable to you and
- 14 your wife, correct?
- 15 A Correct.
- 16 Q And you told that to Dr. Hughes and
- 17 that's the reason why you decided to not get
- 18 pregnant naturally?
- 19 A Right.
- 20 Q And then after learning about PGD
- 21 and learning that its success rate was not a
- 22 hundred percent, was not guaranteed, but it was
- 23 much higher than -- much better than a 25 percent
- 24 chance, that was acceptable to you and that's why
- 25 you did it, correct?

M. Grossbaum - Redirect

69

- 1 A Right.
- 2 Q What percentage chance of your
- 3 having a CF baby would have become unacceptable?
- 4 In other words, if a 2 or 3 percent chance of it
- 5 was okay, and we know 25 percent was not okay, at
- 6 what number did it become not okay for you?
- 7 MR. STEIN: I object to that.
- 8 You're asking him now what is his position now in
- 9 terms of how he thought then. And also I object
- 10 to it because it calls for him to speculate.
- 11 MR. EICHHORN: Okay. I don't agree
- 12 with you, but you can answer it.
- 13 MR. LEUCHTMAN: Well, which are you
- 14 asking, then or now?
- 15 A I don't know. We were --
- 16 basically, we were dealing -- we were making a
- 17 decision on the 98 percent and that's what we
- 18 made a decision on. So any -- earlier we didn't
- 19 have that information to make the decision. We
- 20 were making the decision on 98 or better. So
- 21 anything less, I don't know.
- 22 Q Well, okay, if you had learned that
- 23 the chances were not 98 percent but 90 percent,
- 24 would that have been acceptable to you?
- 25 A I don't know. It's a decision we

M. Grossbaum - Redirect

78

1 philosophy that --

2 MR. STEIN: That's holistic  
3 medicine. That's not osteopathy. An osteopath  
4 is a D.O. They practice pretty conventional  
5 medicine.

6 THE WITNESS: Well, they do now.

7 MR. EICHHORN: All right, boys.  
8 Enough.

9 Q Does Dr. Somers treat anyone in  
10 your family other than Rosie? Does she also  
11 treat your wife?

12 A Possibly. I think so, but I don't  
13 know what she goes for.

14 Q And do you know what Dr. Somers  
15 does for Rosie?

16 A I know when my wife comes back  
17 she'll say that basically she checks her overall  
18 health, her lungs, how her breathing is. I guess  
19 somehow checks something or other. My wife knows  
20 better.

21 Q I don't remember your wife  
22 mentioning that name. So now we're stuck with  
23 you. So do you remember anything more about what  
24 she does other than what you've said?

25 A I don't know. What's kinesiology?

M. Grossbaum - Redirect

80

1 MR. EICHHORN: I was going to ask  
2 that.

3 MR. LEUCHTMAN: Sorry. Sounded  
4 like you were going on to another topic, but go  
5 ahead.

6 A I don't know.

7 Q You don't know where her office is?

8 A No.

9 Q Do you know what town it's in?

10 A It's in New Jersey.

11 Q That's a start.

12 A I don't know.

13 MR. EICHHORN: I'm going to send  
14 you an authorization. I'll make it out to  
15 Dr. Kim Somers and I'll leave the location blank.

16 MR. STEIN: Fine.

17 MR. EICHHORN: Do you have anything  
18 else you'd like to ask before I ask another one?

19 MR. LEUCHTMAN: Yes. As a matter  
20 of fact, there's a question I forgot. Thank you.

21  
22 RECROSS EXAMINATION BY MR. LEUCHTMAN:

23 Q You mentioned bringing up to Dr.  
24 Liccardi on several occasions the unwillingness  
25 to have CVS and amnio, and I don't recall whether

M. Grossbaum - Redirect

79

1 Q We can look it up.

2 MR. LEUCHTMAN: It's all muscles  
3 and joints interacting --

4 MR. STEIN: Well, it doesn't matter  
5 what it is. The only question is what you know  
6 or don't know.

7 A Basically what she does is checks  
8 her, you know, how her lungs are and how she's  
9 growing and progress, things like that.

10 Q To your knowledge, does she, aside  
11 from checking these things, does she do anything,  
12 administer any kind of treatment or medicine or  
13 anything like that?

14 A Medicine, no. Medicine, I really  
15 don't think so. But treatment, like massage or  
16 things of that. I remember when she -- when  
17 Rosie was younger she used to ask us to massage  
18 her chest and things around her lungs and things  
19 like that, but I don't know other than that.

20 MR. LEUCHTMAN: Before we get off  
21 Dr. Somers, how is she spelled, S-O-M-E-R-S or  
22 S-U-M-M-E-R-S?

23 THE WITNESS: I think S-O.

24 MR. LEUCHTMAN: Where is her  
25 office?

M. Grossbaum - Recross

81

1 you said that you remembered that during your  
2 conversation with Dr. Hughes either you or your  
3 wife mentioned an unwillingness to have CVS or  
4 amnio. So please enlighten me.

5 A My wife probably did.

6 Q Probably, but you don't know for  
7 sure.

8 A I believe she did, yes.

9 Q You believe she did?

10 A Yes, she did.

11 Q You did not?

12 A I don't recall.

13 MR. LEUCHTMAN: Thank you.

14  
15 REDIRECT EXAMINATION BY MR. EICHHORN:

16 Q Anything else that you think your  
17 wife left out in talking about what is done for  
18 Rosie?

19 A I don't know if she mentioned about  
20 going on trips. Meaning every time we went on a  
21 trip it's like a whole process and procedure.

22 Q Give me an example.

23 A Meaning, let's say, Toronto. Going  
24 to Toronto, making sure that she has -- being  
25 able to get her all of her enzymes and all her

# **EXHIBIT 9**

2981.101

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
DOCKET NO. 07-CV-1359

CHAYA GROSSBAUM and MENACHEM  
GROSSBAUM, her spouse, individually  
, as guardians ad litem of the  
infant, ROSIE GROSSBAUM,

Plaintiffs,

vs.

DEPOSITION OF:

CHAYA GROSSBAUM  
(Volume 1)

GENESIS GENETICS INSTITUTE,  
L.L.C., of the State of Michigan,  
MARK R. HUGHES, M.D., NEW YORK  
UNIVERSITY SCHOOL OF MEDICINE and  
NEW YORK UNIVERSITY HOSPITALS  
CENTER, both corporations in the  
State of New York, ABC  
CORPORATIONS 1-10 and JOHN DOE  
1-10,

ORIGINAL

Defendants.

-----  
BEFORE: ESTHER J. HODGE, a Certified  
Court Reporter and Notary Public of the State of  
New Jersey, at the offices of NUSBAUM, STEIN,  
GOLDSTEIN, BRONSTEIN & KRON, ESQS., 20 Commerce  
Boulevard, Succasunna, New Jersey, on Wednesday,  
December 17, 2008, commencing at 10:15 a.m.,  
Pursuant to Notice.

GILMARTIN COURT REPORTING SERVICE

Certified Shorthand Reporters  
28 Peterson Road  
P.O. Box 5879  
Hillsborough, New Jersey 08844  
(908) 369-0080  
FAX (908) 369-0081

A P P E A R A N C E S:

NUSBAUM, STEIN, GOLDSTEIN, BRONSTEIN &  
KRON, ESQS.

BY: LEWIS STEIN, ESQ.  
For the Plaintiffs

STEPHEN N. LEUCHTMAN, P.C.

BY: STEPHEN N. LEUCHTMAN, ESQ.  
For the Defendant Genesis Genetics  
Institute, L.L.C. and Dr. Hughes

MARSHALL, DENNEHEY, WARNER, COLEMAN &  
GOGGIN, ESQS.

BY: R. SCOTT EICHHORN, ESQ.  
For the Defendants New York  
University School of Medicine and New  
York University Hospitals Center

ALSO PRESENT:

Menachem Grossbaum, Plaintiff

C. Grossbaum - Direct

6

1 we're speaking at the same time, and it could lead  
2 to an inaccuracy in the transcript. Do you  
3 understand that?

4 A Yes.

5 Q I'll ask you to wait until I've  
6 finished and then answer.

7 A Okay.

8 Q And the same applies to me. I will  
9 have to try to wait until the end of your answer  
10 before I ask you another question. All right?

11 A Okay.

12 Q Another thing is you need to use  
13 words in answer to a question rather than sounds  
14 or gestures. For example, "uh-huh" and "uh-uh"  
15 sound different and mean something differently,  
16 but I would venture to say that if we were to look  
17 at the transcript, they would read the same, so  
18 clearly we don't want that to happen, so if you  
19 use a yes or no there's no misunderstanding but  
20 what you intended. I'll ask you to do that.  
21 Sometimes people forget that and will use a sound,  
22 and with three lawyers here, if you ever do that  
23 one of us will remind you that you need to use a  
24 word. Okay?

25 A Yes.

C. Grossbaum - Direct

8

1 to answer we ask that you do that, but if your  
2 answer gets to the point where you're just  
3 guessing, no one wants you to guess because you  
4 might guess one way today and you might guess  
5 differently at a later time, and now you have a  
6 discrepancy. Okay?

7 A Yes.

8 Q So just keep that in mind. If you  
9 know the answer, tell us that. If you have a  
10 reasonable estimate of the answer, tell us that,  
11 and if you need something to help you refresh your  
12 memory to answer, tell us that. Okay?

13 A Okay.

14 Q Are you taking any medication that  
15 would impair your ability to answer all these  
16 questions and answer them honestly to the best of  
17 your ability?

18 A No.

19 Q Is there any reason why you feel  
20 you're not in tip-top shape ready to answer these  
21 questions today?

22 A No.

23 Q Did you understand the instructions  
24 that I gave you?

25 A Yes.

C. Grossbaum - Direct

7

1 Q If you don't understand a question  
2 that I ask you, let me know that. It's my  
3 obligation to ask a question that you understand  
4 before it's your obligation to answer it. Okay?

5 A Okay.

6 Q So if you do answer a question,  
7 I'll assume two things. Number one, I will assume  
8 that you understood it, and number two, I will  
9 assume that your answer is truthful. Okay?

10 A Yes.

11 Q You've been placed under oath.  
12 Although we're in a courtroom, your testimony and  
13 your husband's testimony is every bit as important  
14 as if you were in a courtroom, and therefore, it's  
15 important to understand that if you were to answer  
16 a question one way today and answer that question  
17 differently at a later time, you can be confronted  
18 with the discrepancy. Do you understand that?

19 A Yes.

20 Q So to try to avoid that, we ask  
21 that you testify to what you remember. You can  
22 have your memory refreshed if you want to look at  
23 something to help you answer a question. You can  
24 do that. We'll ask you what you're looking at,  
25 and if you can give a reasonable estimate in order

C. Grossbaum - Direct

9

1 Q Have you had the opportunity to  
2 speak to your attorney before the deposition about  
3 the deposition?

4 A Yes.

5 Q Do you think that you have an  
6 understanding of what we're about to do?

7 A Yes.

8 Q Am I correct your date of birth was  
9 May 27th, 1980?

10 A Yes.

11 Q Although I'm terrible at math,  
12 you're 28?

13 A Yes.

14 Q And your husband is a few months  
15 older than you are?

16 A Yes.

17 Q When were you married?

18 A August 22nd, 2002.

19 Q And was that a first marriage for  
20 each of you?

21 A Yes.

22 Q Have you lived together since that  
23 time without interruption?

24 A Yes.

25 Q Have you lived at the same place as

C. Grossbaum - Direct

10

- 1 a couple since that time or more than one?  
 2 A More than one.  
 3 Q How many?  
 4 A Two.  
 5 Q We can do those. Where have you  
 6 lived?  
 7 A Brooklyn, New York.  
 8 Q For how long?  
 9 A Three years.  
 10 Q So from August of 2002 till  
 11 sometime in 2005?  
 12 A Yes.  
 13 Q And after that where?  
 14 A Morristown, New Jersey.  
 15 Q And is that at the address -- I  
 16 think it was Lake something. What's the address?  
 17 A 122 Lake Valley Road.  
 18 Q Has that been the address in  
 19 Morristown the whole time?  
 20 A Yes.  
 21 Q When you lived in Brooklyn, did  
 22 anyone live with you other than you and your  
 23 husband?  
 24 A No.  
 25 Q How about in Morristown? Has

C. Grossbaum - Direct

12

- 1 MR. EICHHORN: She's doing pretty  
 2 good.  
 3 MR. STEIN: I know.  
 4 Q Rosie's date of birth was what?  
 5 A March 25th, 2005.  
 6 Q Is "Rosie" what you call her?  
 7 A Yes.  
 8 Q Do you have any other children?  
 9 A No.  
 10 Q Are you presently pregnant with a  
 11 child?  
 12 A No.  
 13 Q Do you have any plans for more  
 14 children?  
 15 A Yes.  
 16 Q Could you tell me what you mean by  
 17 that? What are your plans?  
 18 A I don't know yet. I don't know.  
 19 That's -- I don't know.  
 20 Q Now you're going to find out what  
 21 it's like with lawyers. See, most people would  
 22 leave that alone, but we dig a little deeper to  
 23 find out exactly what that means. I'm not trying  
 24 to be nosy.  
 25 A I understand.

C. Grossbaum - Direct

11

- 1 anyone lived with you and your husband and now, of  
 2 course, Rosie?  
 3 A Yes.  
 4 Q Who is that?  
 5 A My family, my parents. We rent the  
 6 basement.  
 7 Q So is this a single-family home?  
 8 A Yes.  
 9 Q Do you and your husband own it?  
 10 A No.  
 11 Q Rent it?  
 12 A We rent the basement.  
 13 Q Who owns the home?  
 14 A My parents.  
 15 Q Did your parents live in Morristown  
 16 at this address for some period of years --  
 17 A Yes. Sorry.  
 18 Q That's okay. Before you moved  
 19 there and rented the basement?  
 20 A Yes.  
 21 Q Is that the house that you grew up  
 22 in?  
 23 A No.  
 24 MR. STEIN: That's why he asked you  
 25 to wait.

C. Grossbaum - Direct

13

- 1 Q When you say "I don't know," does  
 2 that mean that you don't know whether or not you  
 3 want more children, or does it mean you want more  
 4 children but you don't know when you will try  
 5 again, or exactly what more specifically does it  
 6 mean?  
 7 A It means I want more children. I  
 8 don't know when I'm going to try again.  
 9 Q Is there any particular reason why  
 10 you don't know when you'll try again, given that  
 11 you know that you want more children?  
 12 A Yes.  
 13 Q What's that?  
 14 A I don't know how I will decide to  
 15 get pregnant again.  
 16 Q And tell me what you mean by that.  
 17 A Well, the last time I got pregnant  
 18 through the IVF, but now I don't know how exactly  
 19 I want to go about doing it again because I don't  
 20 know if I want to do that again.  
 21 Q So the options are doing it  
 22 naturally. Right?  
 23 A Yes.  
 24 Q Doing it through IVF? Yes?  
 25 A Yes.



<p>C. Grossbaum - Direct 18</p> <p>1 the testing in 2000, did you learn, take efforts</p> <p>2 to learn about CF at that time?</p> <p>3 A Yes.</p> <p>4 Q And what did you specifically learn</p> <p>5 about the results of your testing vis-a-vis CF?</p> <p>6 A I don't understand.</p> <p>7 Q In other words -- I'll ask it this</p> <p>8 way. Did this testing reveal that you were a</p> <p>9 carrier of CF?</p> <p>10 A Yes.</p> <p>11 Q After you learned that, what did</p> <p>12 you then learn on your own about CF?</p> <p>13 A I learned about what the disease is</p> <p>14 and how it works and what happens, you know -- the</p> <p>15 disease.</p> <p>16 Q And did you learn about if two</p> <p>17 people are carriers --</p> <p>18 MR. EICHHORN: Strike that.</p> <p>19 Q Did you learn what is required for</p> <p>20 a baby to be born with CF as opposed to just being</p> <p>21 a carrier of CF?</p> <p>22 A Yes.</p> <p>23 Q What did you learn in that regard?</p> <p>24 A That if both parents are carriers,</p> <p>25 then the chances of a child being born with CF are</p>	<p>C. Grossbaum - Direct 20</p> <p>1 Can you explain?</p> <p>2 Q Personally have a relationship and</p> <p>3 know them as opposed to, "I know there's a woman</p> <p>4 two streets down who has CF." I mean know them as</p> <p>5 a person.</p> <p>6 A No.</p> <p>7 Q At the present time other than</p> <p>8 Rosie, do you know anyone who has CF?</p> <p>9 A Yes.</p> <p>10 Q When did you first meet and get to</p> <p>11 know as a person someone who has CF?</p> <p>12 A After she was born.</p> <p>13 Q Was that after you learned that she</p> <p>14 had CF?</p> <p>15 A Yes.</p> <p>16 Q And then did you seek to learn more</p> <p>17 about it, and that's how this happened?</p> <p>18 A Yes.</p> <p>19 Q And where did you meet the first</p> <p>20 person that had CF?</p> <p>21 A She lives in the area where we</p> <p>22 live, and someone that I knew knew her and</p> <p>23 connected us.</p> <p>24 Q What is her name?</p> <p>25 A Kate Arian.</p>
<p>C. Grossbaum - Direct 19</p> <p>1 about one in four.</p> <p>2 Q And how did you learn this</p> <p>3 information that you just explained to me?</p> <p>4 A Several different ways. Through a</p> <p>5 genetic counselor, through reading about it.</p> <p>6 Q When did you see the genetic</p> <p>7 counselor?</p> <p>8 A 2001 I believe.</p> <p>9 Q When you were growing up -- are you</p> <p>10 still thinking on that one?</p> <p>11 A I'm just trying to remember if it</p> <p>12 was 2000 or 2001.</p> <p>13 Q Let's say when you were growing up,</p> <p>14 up until the time you graduated high school, did</p> <p>15 you know anyone, have any friends -- did you have</p> <p>16 any friends who had CF?</p> <p>17 A No.</p> <p>18 Q Did you know anyone who had CF?</p> <p>19 A No.</p> <p>20 Q After you graduated high school up</p> <p>21 until the time that you met Dr. Hughes and the</p> <p>22 people at the NYU IVF clinic, in that window of</p> <p>23 time, did you know anyone with CF?</p> <p>24 A I don't know what you mean by</p> <p>25 "know." Personally have a relationship or know?</p>	<p>C. Grossbaum - Direct 21</p> <p>1 Q Kate?</p> <p>2 A Uh-huh.</p> <p>3 Q How is Arian spelled?</p> <p>4 A A-r-i-a-n.</p> <p>5 Q How old is Kate?</p> <p>6 A She's about 18 or 19. She's</p> <p>7 college age.</p> <p>8 Q Does she live in Morristown also?</p> <p>9 A Mendham.</p> <p>10 Q You met her through a mutual</p> <p>11 friend?</p> <p>12 A Yes, the family, her family.</p> <p>13 Q Did you talk to Kate about what</p> <p>14 it's like having CF and how she's handled it?</p> <p>15 A It was more her mother. We spoke</p> <p>16 more with her parents.</p> <p>17 Q Who are they? What are their</p> <p>18 names?</p> <p>19 A I don't remember their first names</p> <p>20 now.</p> <p>21 Q Can you tell me where they live?</p> <p>22 A Mendham.</p> <p>23 Q Right. Can you tell me their house</p> <p>24 address or street address?</p> <p>25 A No.</p>

C. Grossbaum - Direct

38

- 1 a family?
- 2 A Yes.
- 3 Q Was he the first person whose
- 4 counsel you sought out on that issue, you and your
- 5 husband?
- 6 A Yeah.
- 7 Q Is he still one of the principals
- 8 at Cheder Lubavitch?
- 9 A No.
- 10 Q Did you say he lives in Munsey, New
- 11 York?
- 12 A Yes. It's like Rockland County
- 13 area.
- 14 MR. STEIN: It's up near Suffern.
- 15 THE WITNESS: Technically it might
- 16 even be Suffern. It's in one mashed area.
- 17 Q Are you still in contact with Rabbi
- 18 Markowitz?
- 19 A Not on a regular basis.
- 20 Q Do you speak to him once a year or
- 21 more?
- 22 A I would say maybe once a year.
- 23 Q Can you tell me -- first of all,
- 24 can you tell me approximately when it was that you
- 25 first consulted him on the issue of you and your

C. Grossbaum - Direct

40

- 1 they do is they take your blood work.
- 2 Q Do you want some water?
- 3 A That would be good, yes, please.
- 4 MR. EICHORN: We'll take a break
- 5 and get you some water.
- 6 (Whereupon, a break is taken.)
- 7 Q You were in the middle of
- 8 answering.
- 9 A I said before I was in high school,
- 10 and he was in Yeshiva. They take your blood work,
- 11 but they don't tell you your results until they're
- 12 ready to get married, and when you're ready to go
- 13 get engaged -- after the couple gets engaged --
- 14 before you're engaged they tell you whether you
- 15 are compatible or not. They told us that we were
- 16 carriers for cystic fibrosis, so it was several
- 17 years after we were in high school.
- 18 Q I'm afraid you lost me on that.
- 19 Maybe I misunderstood earlier. I thought that you
- 20 had that testing done by Dor Yeshorim in 2000 and
- 21 that you learned at that time.
- 22 A I didn't get tested by Dor Yeshorim
- 23 in 2000. In 2000 it was Morristown Memorial. In
- 24 1998 I got tested by Dor Yeshorim.
- 25 Q In 1998 when Dor Yeshorim tested

C. Grossbaum - Direct

39

- 1 husband wanting to start a family?
- 2 A I don't remember the exact time.
- 3 Q Can you tell me what information
- 4 did you seek to gain from him about that issue?
- 5 A I guess just advice. Yeah, advice.
- 6 Q Was it advice specifically because
- 7 of your prior test results, or was it just general
- 8 advice?
- 9 A I don't understand what you're
- 10 saying.
- 11 Q In other words, did you seek out
- 12 Rabbi Markowitz and talk to him about wanting to
- 13 start a family because you knew you were a CF
- 14 carrier, or just generally because you wanted to
- 15 talk to him about the idea of starting a family?
- 16 A Specifically because we were a CF
- 17 carrier.
- 18 Q At the time that you first spoke to
- 19 Rabbi Markowitz about these issues, did you
- 20 already know that your husband also was a CF
- 21 carrier?
- 22 A Yes.
- 23 Q How had you learned that?
- 24 A When we were ready to get engaged
- 25 we called the organization Dor Yeshorim, and what

C. Grossbaum - Direct

41

- 1 you, you did not learn the results then?
- 2 A No.
- 3 Q In 2000 were you and Menachem
- 4 considering getting married at that time?
- 5 A Yes.
- 6 Q Were you engaged yet?
- 7 A No.
- 8 Q At that point in your relationship
- 9 is that the point when couples would generally
- 10 find out the results of their testing? Is that
- 11 what you just told me?
- 12 A People find out before they go out
- 13 or get engaged.
- 14 Q By "go out" you mean date?
- 15 A Uh-huh, yes.
- 16 Q Some people will find out before
- 17 they even date. Other people may date and find
- 18 out before they get engaged?
- 19 A Right.
- 20 Q In your situation you had dated
- 21 already. You were serious. You were thinking of
- 22 getting engaged, and then you found out?
- 23 A Right.
- 24 Q From whom did you learn the results
- 25 of both your tests? From what organization?

C. Grossbaum - Direct

42

- 1 A Dor Yeshorim said we were not  
2 compatible.  
3 Q Tell me what "not compatible" means  
4 in the way Dor Yeshorim uses it.  
5 A When they take your blood, they  
6 give you a card with an I.D. number, and before  
7 you're ready to get engaged, you give them the two  
8 numbers, and they tell you whether it's a match or  
9 not.  
10 Q When you say "match," according to  
11 what criteria are you talking match?  
12 A If you're both carriers I guess for  
13 the same genetic condition.  
14 Q Maybe you told me. Did you tell me  
15 when it was you learned this information about you  
16 and your husband, when you learned the results of  
17 the test in which they told you you were not  
18 compatible?  
19 A That was in 2000.  
20 Q And did you or your husband test  
21 positive for any other disease or abnormality  
22 other than being carriers for CF?  
23 A They don't tell you if you're a  
24 carrier for something. They just tell you if you  
25 both are the carrier for the same condition.

C. Grossbaum - Direct

44

- 1 Did you call up Dor Yeshorim to find out?  
2 A Yes.  
3 Q Did you learn the results over the  
4 phone?  
5 A Yes.  
6 Q When you learned the results over  
7 the phone, were you simply told that you and your  
8 husband were both carriers for CF, and you were  
9 not compatible, or were you also told additional  
10 information about the significance of those test  
11 results?  
12 A We were not really given much more  
13 information about cystic fibrosis or anything  
14 else.  
15 Q When you were saying "not really  
16 given much more," to me that means you were given  
17 some more. My question is, what else were you  
18 told?  
19 A We were told that we were both  
20 carriers of cystic fibrosis, and we had to do  
21 research to find out what cystic fibrosis was.  
22 Q Was it after that that you went to  
23 Morristown and had testing redone?  
24 A Yes.  
25 Q Why did you do that?

C. Grossbaum - Direct

43

- 1 Q So the sum and substance of the  
2 results of your testing that you learned was both  
3 of you were carriers for CF, and therefore, you  
4 were characterized as not compatible?  
5 A That we were both -- we found out  
6 that we were both carriers.  
7 Q For cystic fibrosis?  
8 A Yes.  
9 Q Did Dor Yeshorim make any  
10 recommendations to you as a result of that  
11 testing?  
12 A No, they don't do that.  
13 Q They don't say anything from a  
14 religious authority perspective of whether you  
15 should or should not get married?  
16 A No, they just -- that's not what  
17 they do. They just -- it's like a database.  
18 Q When you learned this information,  
19 were you given any additional information as to  
20 the significance of the fact that you were both CF  
21 carriers, or just simply you're both carriers for  
22 cystic fibrosis, and you're not compatible and  
23 that's it?  
24 A Can you explain what you're asking?  
25 Q How did you find out these results?

C. Grossbaum - Direct

45

- 1 A Because they recommend that you do  
2 that just to confirm the results.  
3 Q Were the results confirmed?  
4 A Yes.  
5 Q Did you go to Morristown, just you  
6 or your husband also?  
7 A In 2000, just I went, and he got  
8 retested by the organization. They took his blood  
9 again.  
10 Q Were the results confirmed?  
11 A Yes.  
12 Q Did you know all of that  
13 information before you first spoke to Rabbi  
14 Markowitz?  
15 A Yes.  
16 Q Is that why you spoke to Rabbi  
17 Markowitz?  
18 A Yes.  
19 Q What is Rabbi Markowitz's role that  
20 he would be a person that you would go to for  
21 consultation in this field?  
22 A He was just somebody that we were  
23 close to and is connected to a lot of different  
24 people and has a lot of different resources.  
25 Q Does he himself get involved in

C. Grossbaum - Direct

46

- 1 issues of fertility for couples?  
 2 A I don't know if it's like a general  
 3 thing that he does. I don't know.  
 4 Q I assume you told Rabbi Markowitz  
 5 that you were both CF carriers?  
 6 A Yes.  
 7 Q What did he tell you?  
 8 A I don't know -- I can't really --  
 9 how much do you want me to -- I don't understand  
 10 what you want me to . . .  
 11 Q I'm trying to get a feeling for  
 12 what the discussion was, what he told you. I  
 13 believe you did tell me that he ended up referring  
 14 you to Rabbi Jacobowitz?  
 15 A Right, so we were just basically  
 16 discussing with him what our options could be,  
 17 what options we had, how we can go about finding  
 18 out what our options were, advice on what his  
 19 opinion on -- how we should go about finding out  
 20 different options. He was kind of like -- I don't  
 21 know the word, but someone that we were close to  
 22 that was an open ear that we could talk to and  
 23 confide in.  
 24 Q He told you that the person that  
 25 would be in the best position to possibly help you

C. Grossbaum - Direct

48

- 1 A He knew of some, and I knew of  
 2 some. We both knew.  
 3 Q When I say "similar situated," I  
 4 mean where both the husband and the wife were CF  
 5 carriers.  
 6 A Uh-huh, yes.  
 7 Q If I'm wrong, tell me. It  
 8 sounds -- from what you've just told me it sounds  
 9 like he didn't really give you any significant  
 10 substantive information about CF or  
 11 recommendations about what you should do, other  
 12 than referring you on to Rabbi Jacobowitz. Is  
 13 that accurate?  
 14 A Yes.  
 15 Q Can you tell me when you first met  
 16 Rabbi Jacobowitz?  
 17 A I guess it was in '04  
 18 MR. STEIN: You know, Scott, I know  
 19 it's a memory test, but I can't help saying I'm  
 20 sitting here with the first appointment call to  
 21 NYU in the records which has a date on it, and I  
 22 think that would probably be the answer.  
 23 MR. EICHHORN: That's not when  
 24 Rabbi -- that's when they contacted NYU through  
 25 him. They could have been talking to him for I

C. Grossbaum - Direct

47

- 1 would be Rabbi Jacobowitz?  
 2 A Yes.  
 3 Q Did Rabbi Markowitz say anything to  
 4 you about the issue of becoming pregnant given  
 5 that you were both CF carriers, or did he just  
 6 defer on that issue completely?  
 7 A We spoke about -- can you explain?  
 8 Q Did he give you any advice?  
 9 A He didn't tell me what to do one  
 10 way or the other. He wasn't like, Do this or  
 11 don't do that. He was trying to help guide us to  
 12 make the right decision for ourselves.  
 13 Q I'm trying to get a little bit of  
 14 what that discussion was. If he tried to help  
 15 guide you and what decision was best for you, what  
 16 were you talking about? What was the issue that  
 17 you were concerned about?  
 18 A About having children obviously and  
 19 getting married -- you know, getting married and  
 20 having children and having a family and what our  
 21 future would be.  
 22 Q Did you ask him whether he knew any  
 23 couples similarly situated to you?  
 24 A Yes.  
 25 Q What did he tell you?

C. Grossbaum - Direct

49

- 1 don't know how long before that.  
 2 MR. STEIN: You can focus on it  
 3 right like that, how long before.  
 4 Q I'm not trying to trip you up. You  
 5 told me already that you were referred by Rabbi  
 6 Jacobowitz in NYU in around February or March of  
 7 2004, so with that date in mind, can you tell me  
 8 in relation to that how much before that you did  
 9 first meet Rabbi Jacobowitz?  
 10 A I don't remember exactly, but it  
 11 was probably two to three months before.  
 12 Q Did you first encounter him in  
 13 person or on the telephone?  
 14 A We spoke to him on the phone.  
 15 Q Did you arrange a personal meeting?  
 16 A Not at that time.  
 17 Q When you first spoke to him, I  
 18 would imagine you told him that you were referred  
 19 to him by Rabbi Markowitz. Right?  
 20 A Yes.  
 21 Q What was the rest of the  
 22 discussion?  
 23 A He basically explained what the  
 24 general options were, and he referred us to Dr.  
 25 Liccardi at NYU.



C. Grossbaum - Direct

50

- 1 Q Tell me what he told you the  
2 general options were.  
3 A The PGD and IVF.  
4 Q Did he discuss anything else?  
5 A No. We went to him basically  
6 because we knew he did that work. He was involved  
7 in that at NYU.  
8 Q Had you learned that from Rabbi  
9 Markowitz?  
10 A Yes.  
11 Q That's something that Rabbi  
12 Markowitz told you?  
13 A Yes.  
14 Q When you spoke to Rabbi Jacobowitz,  
15 he then talked to you about the possibility of  
16 using PGD and IVF, and he referred you to Dr.  
17 Liccardi?  
18 A Yes. He said he works with Dr.  
19 Liccardi at NYU, and they do that.  
20 Q How many times had you met or spoke  
21 to Rabbi Jacobowitz before you went to the NYU IVF  
22 clinic?  
23 A Two or three times.  
24 Q In that period of time, can you  
25 tell me what involvement he had with PGD and IVF?

C. Grossbaum - Direct

52

- 1 the right embryo gets implanted in the correct  
2 woman and whatever Jewish laws are connected with  
3 the procedure, that they are followed. He's what  
4 they call a mashgiach. I don't know if you know  
5 that word.  
6 Q No. How do you spell it?  
7 A M-a-s-h-g-i-a-c-h.  
8 Q That's a title, a mashgiach?  
9 A Yes.  
10 Q And what does it mean?  
11 A It means basically someone who  
12 watches or supervises whatever it is that they're  
13 watching, so when you see a food that has an "OU"  
14 or "kosher," similarly there was a mashgiach that  
15 was supervising at the plant to make sure that  
16 nothing unkosher went in to make sure there was --  
17 MR. STEIN: He's the lawyer in  
18 residence basically.  
19 Q So whether it's a medical procedure  
20 or food procedure, he's the one that makes sure --  
21 MR. STEIN: The same way that  
22 there's somebody there at a stockyard.  
23 THE WITNESS: That's right.  
24 MR. STEIN: When you went to a  
25 stockyard to get chickens, he supervises when the

C. Grossbaum - Direct

51

- 1 A He worked more on the supervision  
2 end, the Jewish, the Halachic supervision when  
3 they do the procedure.  
4 Q What is that?  
5 A When they do IVF and they implant  
6 the embryo in the woman, he's like supervisor  
7 there to make sure that it's done all according to  
8 Jewish law properly.  
9 Q He had had prior experience in  
10 personally attending to these procedures, not in a  
11 medical capacity, but a religious capacity?  
12 A Right, that's what he does at NYU.  
13 Q When you said he does that at NYU,  
14 to your understanding, is he an employee of NYU or  
15 does he work with them?  
16 A I don't know if he's an employee of  
17 theirs.  
18 Q Did he tell how many such cases he  
19 had been involved in in his experience?  
20 A I don't remember.  
21 Q What if you know is he there to  
22 observe for in connection with observance of  
23 Jewish law?  
24 A I don't really know all the  
25 details, but I know it has to do with making sure

C. Grossbaum - Direct

53

- 1 animals are killed. It's humane treatment of  
2 people and animals.  
3 A If it's a dairy plant, they are  
4 making sure that it gets cleaned and koshered  
5 properly, just making sure that everything is  
6 kosher.  
7 Q I was trying to do this  
8 chronologically to make it easier for both of us,  
9 but I'm going to jump ahead for now. Did Rabbi  
10 Jacobowitz fulfill this role as mashgiach with  
11 regard to your procedures at NYU?  
12 A Yes.  
13 Q At any time did Rabbi Markowitz  
14 ever tell you that there had been any violation of  
15 Jewish law during any of the procedures at NYU?  
16 A No.  
17 Q Did Rabbi Jacobowitz ever tell you  
18 that there was any problem that he was aware of  
19 with respect to any of your procedures at NYU?  
20 A No.  
21 Q To your knowledge, did Rabbi  
22 Jacobowitz personally believe for himself that the  
23 correct embryos had been implanted in you?  
24 MR. STEIN: I object. You're  
25 asking for state of mind.

C. Grossbaum - Direct

62

1 Q Was that medical detail about the  
2 process itself?

3 A Yes.

4 Q You mentioned that he said  
5 something about pregnancy rates or some kind of  
6 rates. Tell me what he was talking about in that  
7 regard.

8 A Any time you do in vitro  
9 fertilization, even if you don't have a fertility  
10 problem, your chances of getting pregnant are  
11 lowered because it's them implanting with the  
12 embryo.

13 Q This is what he told you?

14 A Yeah, and then it goes by age.

15 Q Did he mention any pertinent  
16 success rates, pertinent to your case?

17 MR. STEIN: Obviously if he's  
18 talking about a success rate in getting pregnant,  
19 the only thing that's meaningful to her is how it  
20 relates to her, so are you suggesting that there  
21 was some distinguishing characteristics?

22 MR. EICHHORN: I'll rephrase it.

23 Q Given your age, given whatever your  
24 medical history was, did he talk to you based upon  
25 his experience what your expected -- the expected

C. Grossbaum - Direct

64

1 would make it okay?

2 A If there's danger to the mother's  
3 life. I'm not -- I'm not really an expert on it,  
4 but I know some cases if they know that the child  
5 won't survive past -- for a while and it will be  
6 in a lot of pain, they might say it's okay. I'm  
7 not like an expert in the allowances of having an  
8 abortion, but I think those are the two main  
9 factors.

10 Q Did you seek information and  
11 guidance on that issue from anyone during this  
12 process?

13 A Yes.

14 Q Who?

15 A Rabbi Tendler.

16 Q Where is Tendler from?

17 A He's also from the Munsey area.

18 Q How did you get his name?

19 A I believe also from Rabbi

20 Markowitz.

21 Q And what issues did you discuss  
22 with Rabbi Tendler?

23 A What he thought our best options  
24 according to Jewish law were to get pregnant.

25 Q Out of what choices?

C. Grossbaum - Direct

63

1 success rate for your IVF pregnancy?

2 A Yes. There was about a 50-percent  
3 chance of actually resulting in a pregnancy.

4 Q Did you have any discussion with  
5 Dr. Liccardi about the option of having a baby  
6 naturally without IVF?

7 A He did mention that that was a  
8 possibility.

9 Q Is that something that you  
10 considered?

11 A No.

12 Q Why not?

13 A Because we're orthodox, and we  
14 wouldn't want to -- we wouldn't make the decision  
15 to have an abortion.

16 Q You're telling me that your  
17 orthodox Jewish religion prevents you from having  
18 an abortion?

19 A In many circumstances.

20 Q Tell me what that means.

21 A You just can't go ahead and decide  
22 to have an abortion. There would have to be  
23 extenuating circumstances to make it okay  
24 according to Jewish law.

25 Q What extenuating circumstances

C. Grossbaum - Direct

65

1 A Getting pregnant naturally, getting  
2 pregnant and having an abortion, and doing the  
3 PGD.

4 Q So those three choices were  
5 discussed with Dr. Tendler?

6 A Yes.

7 Q What advice did he give you?

8 A His advice was that the best option  
9 according to Jewish law would be the PGD.

10 Q If you and your husband were to  
11 decide to get pregnant naturally, it was your  
12 understanding that you would have a one-in-four  
13 chance that your child would have CF. Correct?

14 A Yes.

15 Q So if you decided to get pregnant  
16 naturally and learned during your pregnancy that  
17 your child was going to have CF, Jewish law  
18 wouldn't prevent you from giving birth to that  
19 child, would it?

20 A No.

21 Q So you're certainly free under  
22 Jewish law to have that baby and raise that baby  
23 with CF. Correct?

24 A Yes.

25 Q On the other hand, if you learned

C. Grossbaum - Direct

66

- 1 during the pregnancy that your child was going to  
 2 have CF, are you saying that Jewish law would not  
 3 permit you to have an abortion?  
 4 A It depends on the circumstances.  
 5 Q And in these circumstances, the  
 6 circumstance of you and your husband and knowledge  
 7 that your child was going to be afflicted with CF,  
 8 is it your testimony that Jewish law would prevent  
 9 you from having an abortion?  
 10 A Yes.  
 11 Q And who told you that?  
 12 A Rabbi Tendler.  
 13 Q Did you seek counsel from anyone  
 14 else on that issue?  
 15 A No.  
 16 Q Is he the only person you discussed  
 17 that issue with ever before giving birth to Rosie?  
 18 A Probably not the only person I  
 19 discussed the issue with.  
 20 Q Well, did you discuss it with any  
 21 other rabbis for their expertise and guidance on  
 22 that issue?  
 23 A No.  
 24 Q Am I correct that you never spoke  
 25 to your own rabbi about that issue, the rabbi at

C. Grossbaum - Direct

68

- 1 A Yes.  
 2 Q And that was based upon speaking to  
 3 Rabbi Tendler?  
 4 A Yes.  
 5 Q Am I correct that a circumstance  
 6 that would make abortion acceptable in your  
 7 religion is if based upon the abnormalities of the  
 8 child, it's known that that child would be born  
 9 with a significant illness that would impact on  
 10 the quality of their life and the expectancy of  
 11 their life, their life expectancy?  
 12 A Correct.  
 13 Q So in that situation those facts  
 14 are such that abortion would be acceptable in that  
 15 setting?  
 16 A Right, depending on the specific  
 17 situation.  
 18 Q After that first meeting with Dr.  
 19 Liccardi, I think you said you talked to him a  
 20 couple of times?  
 21 A Dr. Liccardi?  
 22 Q Yes.  
 23 A At that time we had the  
 24 consultation with him.  
 25 Q You met him for the consultation,

C. Grossbaum - Direct

67

- 1 the synagogue one mile away?  
 2 A No.  
 3 Q Is it your understanding that  
 4 rabbis have the authority to make exceptions to  
 5 rules, to general rules for people?  
 6 A I don't believe they make  
 7 exceptions. There's different circumstances, and  
 8 different circumstances can result in different  
 9 decisions.  
 10 Q Am I correct that there's a general  
 11 --  
 12 MR. EICHHORN: Strike that.  
 13 Q Am I correct that generally your  
 14 religion looks down on abortions, however,  
 15 understanding that there are times when based upon  
 16 the circumstances it is considered acceptable?  
 17 A Yes.  
 18 Q Am I correct that one of those  
 19 circumstances that can be considered acceptable is  
 20 if it is determined that the couple is not in a  
 21 position to have to deal with whatever the  
 22 abnormalities of their child will be?  
 23 A No, it's not as simple as that.  
 24 Q You think that statement is  
 25 inaccurate, what I just said?

C. Grossbaum - Direct

69

- 1 and what happened next?  
 2 A He had us set up a phone meeting  
 3 with Dr. Hughes.  
 4 Q Phone meeting with him also or just  
 5 Dr. Hughes?  
 6 A No, just Dr. Hughes.  
 7 Q How long after your consultation  
 8 with Dr. Liccardi did the phone conference with  
 9 Dr. Hughes take place?  
 10 A It was within a few weeks.  
 11 Q Tell me what the discussion was.  
 12 A What exactly do you want to know?  
 13 Q I'd like to know what was said.  
 14 A He told us about what the PGD was  
 15 and what he did and how -- just how he did the  
 16 PGD, you know, the scientific things behind it.  
 17 Q Do you remember -- I assume you and  
 18 your husband were both involved in this?  
 19 A Yes.  
 20 Q Do you remember whether either of  
 21 you had any questions for him?  
 22 A Yes.  
 23 Q Yes --  
 24 A We had questions for him.  
 25 Q And did he answer them to your



C. Grossbaum - Direct

78

1 procedures associated with IVF?

2 A No. In fact, I believe I asked  
3 about that, and they said that there were very  
4 small, you know, chances of there being a specific  
5 problem with the baby once it was born other than  
6 not getting pregnant.

7 Q When you say "small chances"  
8 though, what do you mean by that?

9 A That there was a very slim chance  
10 of there being any problem with the baby once it  
11 was born.

12 Q When you say "slim," are you  
13 talking statistically? Is that what you mean?

14 A I don't know the statistics, but  
15 when I said -- I asked what are the long-term  
16 effects for having a baby through IVF or health  
17 risks, and they said, you know, it's not really a  
18 common situation.

19 Q And what's your understanding as to  
20 the percentage incidence of damage to the baby  
21 from an amnio?

22 A I don't remember the percentages.

23 Q Would you agree that it's uncommon?

24 A Yes.

25 Q Would you agree that it's slim?

C. Grossbaum - Direct

80

1 you mean?

2 Q Prevent.

3 A Yes, most rabbis within the Chabad  
4 movement would say not to do the amnio or the CVS.

5 Q You said the main reason you  
6 believe they would say that is because of the risk  
7 to the baby?

8 A No, I didn't say only because of  
9 the risk, but also if you're not going to abort  
10 the baby, then what's the purpose of doing the  
11 test?

12 Q If you know that you and your  
13 husband are carriers of a gene of an illness and  
14 it's possible that your child can have that  
15 illness, do you agree with me that one reason for  
16 having an amniocentesis, even if you're not  
17 thinking of abortion, is to find out whether or  
18 not your child is going to have that illness so  
19 that if your child does have that illness when  
20 your child is born, you'll be more emotionally  
21 prepared for it?

22 A Not necessarily.

23 Q You don't think that's a viable  
24 reason for undergoing an amniocentesis?

25 A I think it's a viable reason for

C. Grossbaum - Direct

79

1 A Yes.

2 Q So your knowledge of a  
3 amniocentesis was that while, yes, it does create  
4 a risk to the baby on a statistical basis, it's  
5 rare that it happens?

6 A Yes.

7 Q And your knowledge also of the IVF  
8 process is that while it can create a risk to the  
9 baby, it's rare that it happens?

10 A My understanding of the IVF is it's  
11 even less rare -- it's even more -- it's even  
12 rarer that there would be a problem with the baby,  
13 whereas the CVS and the amnio, it's uncommon but  
14 it's not as rare.

15 Q So each of them create potential  
16 risks to the baby. It's not common for either of  
17 them, but it's more rare for amniocentesis. That  
18 was your understanding. Correct?

19 A No, it's even more rare for the  
20 IVF.

21 Q More rare for the IVF. Is it your  
22 testimony that Lubavitch, the Lubavitch sect's  
23 belief would preclude you from having an  
24 amniocentesis?

25 A When you say "preclude," what do

C. Grossbaum - Direct

81

1 people to do that.

2 Q Does it sound like a reason that  
3 makes sense to you?

4 A It makes sense.

5 Q Did you consider that since you  
6 knew you and your husband were carriers for this  
7 illness, did you consider maybe we should test  
8 just to see how this worked out since we know it's  
9 not perfect so that if we are going to have a  
10 child with CF, we can be prepared for that? Did  
11 you consider that?

12 A No.

13 Q Why not?

14 A Because I wouldn't want to -- my  
15 philosophy is what happens, happens. I'll deal  
16 with it, but not -- there's no point in six weeks  
17 of pregnancy to tell and then they can't do  
18 anything about it while I'm pregnant anyway.

19 Q So the rationale that I gave you a  
20 minute ago for undergoing an amnio, you agree that  
21 it makes sense and is logical, but it wasn't for  
22 you?

23 A Correct.

24 Q By the way, if you need a break at  
25 any time, you don't get brownie points for

C. Grossbaum - Direct

118

- 1 any detail. One thing -- basically one thing the  
 2 consent form says is that you agree to have the  
 3 fertilized embryos frozen, and there's no  
 4 guarantee that they'll survive the freezing  
 5 process.
- 6 A Yes.
- 7 Q You understood that?
- 8 A Yes.
- 9
- 10 (Addendum to IVF-ET Transfer Consent,  
 11 Embryo Biopsy and Preimplantation Genetic  
 12 Diagnosis dated 6/4/04, marked as Exhibit  
 13 Grossbaum-3 for Identification.)
- 14
- 15 Q This is a consent form that we've  
 16 marked as Grossbaum-3, and it's entitled,  
 17 "Addendum to IVF-ET Transfer Consent, Embryo  
 18 Biopsy and Preimplantation Genetic Diagnosis." If  
 19 you look, is that your signature and again after  
 20 that your printed name and the date that you  
 21 signed it?
- 22 A Yes.
- 23 Q And that's June 4, 2004?
- 24 A Yes.
- 25 Q I'm going to go through a couple of

C. Grossbaum - Direct

120

- 1 A Yes.
- 2 Q It then says, "The genetic analysis  
 3 may fail or be incorrect, although in PIVF's  
 4 experience with 60-plus patients to date, the  
 5 accuracy has been greater than 90 percent."
- 6 You read that?
- 7 A Yes.
- 8 Q You understood that?
- 9 A Yes.
- 10 Q Did you have any questions for  
 11 anyone or comments about that when you read it?
- 12 A Our questions and comments were  
 13 addressed by Dr. Hughes when we had the  
 14 conversation with him.
- 15 Q So you had your conversation with  
 16 Dr. Hughes before you read and signed this  
 17 document. Correct?
- 18 A Yes.
- 19 Q So was your -- are you saying it  
 20 was you understanding from Dr. Hughes that there  
 21 was a success rate better than 90 percent?
- 22 A Yes.
- 23 Q And can you be any more specific  
 24 about what you said before, that there had been  
 25 hundreds of people and 10 or 11 errors?

C. Grossbaum - Direct

119

- 1 things on this consent, maybe a few more than a  
 2 couple. On the first page, the first main  
 3 paragraph talks about that PGD can detect numerous  
 4 genetic disorders, and when successful it reduces  
 5 the chance of giving birth to a child afflicted  
 6 with a hereditary disease. Is that right?
- 7 A Yes.
- 8 Q You read this document before you  
 9 signed it. Correct?
- 10 A Yes.
- 11 Q And it also -- as with the other  
 12 consent forms, each page has a line at the bottom  
 13 where it appears that you initialed it and you  
 14 dated it. Is that correct?
- 15 A Correct.
- 16 Q And was that initialed at the end  
 17 of each page by you, an indication that you had  
 18 read that page?
- 19 A Yes.
- 20 Q If you look at page three,  
 21 paragraph two, it says, "We understand that  
 22 because PGD is a new procedure, a major risk is  
 23 that the procedure may not be successful."  
 24 You read that and you understood that.  
 25 Correct?

C. Grossbaum - Direct

121

- 1 A Yes. He said that although he  
 2 can't guarantee it because nothing is guaranteed,  
 3 that it was very unlikely that it would be a  
 4 mistake, and he also specified within cystic  
 5 fibrosis, because we had more common mutations,  
 6 that it should be even less difficult to do it  
 7 properly because it was a more common condition,  
 8 more common mutation, and that he wasn't going to  
 9 guarantee anything because nothing is guaranteed,  
 10 but that the risks of it not being a success were  
 11 very slim, and it was a very high chance of it  
 12 being successful.
- 13 Q So your testimony is that Dr.  
 14 Hughes essentially said to you that you had common  
 15 mutations so that there was a better chance of  
 16 success than other cases?
- 17 A I didn't say he said because of the  
 18 mutations it was going to be less of a risk. He  
 19 was just saying that it shouldn't be a difficult  
 20 thing to do because we had a common mutation, and  
 21 I guess what he felt was that there was a very  
 22 slim chance of him being incorrect, and that he  
 23 felt very optimistic that it would be successful.
- 24 Q Did Dr. Hughes say to you and your  
 25 husband that yours was a complicated case for him?

C. Grossbaum - Direct

146

- 1 A lot of difference. You've objected. Go ahead.  
 2 A I don't understand. Specifically  
 3 at that time?  
 4 Q No. We've talked so far about some  
 5 of the things that your sect of orthodox Judaism  
 6 believes?  
 7 A Yes.  
 8 Q I'm asking you another question  
 9 along those lines. Does the Lubavitch sect of  
 10 orthodox Judaism believe when a Lubavitch couple  
 11 is seeking to have a baby, that when the woman is  
 12 ovulating she and her husband should be having  
 13 sexual intercourse?  
 14 A There's a time when -- there's a  
 15 time when physical contact is not permitted and  
 16 any time other than that is appropriate. It's not  
 17 like you have to do it exactly this time and this  
 18 day. It's like how do you exactly know when  
 19 you're ovulating anyway? It's when you don't have  
 20 your period, and you're clean then you can have  
 21 sexual relations. It's not -- the average person  
 22 doesn't know when -- necessarily know when they're  
 23 ovulating.  
 24 Q You have a pretty good idea when  
 25 you're ovulating, don't you?

C. Grossbaum - Direct

148

- 1 anybody?  
 2 A I mean, I don't know that there's a  
 3 -- I don't know how to really answer the question  
 4 because I'm not -- basically I don't know how to  
 5 answer the question because there's the time when  
 6 the woman has a period, and then after a certain  
 7 amount of days after she's not seeing any blood  
 8 for a certain amount of time she goes to what's  
 9 called a mikvah. Do you know what a mikvah is?  
 10 Q No.  
 11 A It's like a ritual bath, she dunks  
 12 in there, and from that point on till she sees  
 13 blood again is considered the appropriate time to  
 14 try to get pregnant. It's not like you -- it's  
 15 not like you are forced to do it at any specific  
 16 time. The night that you go to the mikvah, I  
 17 guess is the best time to do it, but it's not like  
 18 at any point during that month you have to do it,  
 19 so I don't have like a specific answer to give  
 20 you.  
 21 Q During that time in July of 2004,  
 22 were you and your husband having sexual relations?  
 23 A In July?  
 24 Q Yes.  
 25 A Well, from when I started taking

C. Grossbaum - Direct

147

- 1 MR. STEIN: Maybe I can help you.  
 2 I think her last answer said that there's a time  
 3 calculation, and you may want to ask her how to  
 4 calculate, and that may provide you with the  
 5 information that you want.  
 6 MR. EICHHORN: I could, but I'm  
 7 asking her a different question.  
 8 A I don't know exactly when I  
 9 ovulate. I can guess probably assuming that my  
 10 cycle is normal around when I do, but it's not  
 11 like you are forced to do it on those days. It's  
 12 like during this time when you're clean according  
 13 to the kosher law, and you don't have your period  
 14 and you're not bleeding, that any of that time is  
 15 permitted.  
 16 Q That's not what I'm asking you.  
 17 A I don't understand.  
 18 Q I'm not asking about when  
 19 intercourse is permitted. I'm asking a little  
 20 different question which is when you're seeking to  
 21 have a child, whether or not your sect of orthodox  
 22 Judaism states that you and your husband should be  
 23 having sexual intercourse?  
 24 A I don't think so.  
 25 Q Did you ever discuss that with

C. Grossbaum - Direct

149

- 1 certain hormones, there were certain times that I  
 2 wasn't allowed to do anything because they didn't  
 3 want me to have the risk of -- getting pregnant  
 4 while on the hormones could be detrimental, but in  
 5 the times -- unless they specifically said no,  
 6 then I assume we probably did. I don't remember  
 7 specific occasions, but it wasn't like -- unless  
 8 they told us -- I guess when we didn't was when  
 9 they said from here to here, you cannot have  
 10 sexual relations or while you're on these  
 11 hormones.  
 12 Q You started those hormones back in  
 13 April I think?  
 14 A April? I don't think so.  
 15 Q When did you start them? Let's ask  
 16 it that way.  
 17 A I think going back from  
 18 implantation, I don't think it was more than a  
 19 month or so.  
 20 Q The egg retrieval was July 14th?  
 21 A Right, so I guess -- I think I  
 22 started the hormones sometime in May or June.  
 23 Q From the time you started them in  
 24 May or June, what you're saying is that other than  
 25 times when you were told you couldn't have sexual

C. Grossbaum - Direct

150

- 1 relations, while you don't remember exact dates  
2 and details, you probably were?  
3 A Yes.  
4 Q That would include the month of  
5 July, wouldn't it?  
6 A Yes.  
7 Q Was there any time in July that you  
8 specifically remember not having sexual relations  
9 for a particular reason?  
10 A Unless I had my period or they told  
11 me not to.  
12 Q Was there any time in July that  
13 they told you not to?  
14 A Yes.  
15 Q When?  
16 A I don't remember exactly when, but  
17 when I was on certain hormones they said to not  
18 have sexual relations at this time, and for sure  
19 once they did the egg retrieval to the  
20 implantation they also said not to.  
21 Q How long a period of time was it  
22 that we are talking about?  
23 A I think that was a week or so.  
24 Q So during that week is it your  
25 testimony that you did not have sexual relations?

C. Grossbaum - Direct

152

- 1 embryos, and I continued taking the hormones to  
2 get my body ready to receive the embryos, and then  
3 the day -- basically they didn't know exactly what  
4 day, but they watched the embryos to see how they  
5 developed, and at a certain point depending on  
6 which are the best most viable embryos, like come  
7 in Tuesday at 3:00 because we have these three  
8 embryos in the right stage to implant them.  
9 Q Where in all of that does Dr.  
10 Hughes' PGD testing begin?  
11 A I had guess on day three or four,  
12 depending on which embryo is ready they send them  
13 to him overnight. He does his genetic testing and  
14 then sends them back with the information about  
15 each one.  
16 Q After Dr. Hughes' laboratory did  
17 their genetic testing, was there any interaction  
18 between you and your husband and his lab, either  
19 speaking over the phone or in documentation?  
20 A No, I don't think so.  
21 Q What I'm asking is did you receive  
22 any kind of report from Dr. Hughes' lab as to what  
23 his genetic testing had found?  
24 A I believe he gave the report to Dr.  
25 Liccardi.

C. Grossbaum - Direct

151

- 1 A I think the last time before that  
2 that we did is when we had to get the sperm  
3 sample, and that was with a condom because they  
4 had to collect it.  
5 Q But the sperm sample, that was  
6 earlier. When was that done?  
7 A I don't remember in relation to  
8 this how much before it was.  
9 Q So what you're saying if I  
10 understand you correctly -- and if I'm wrong  
11 please tell me -- that you believe that for about  
12 a week after the egg retrieval you did not have  
13 sexual relations other than in the month of July,  
14 unless there was a time that you had your period,  
15 and you assumed that you probably did?  
16 A I can assume. I don't remember for  
17 sure. I don't remember. I really don't remember.  
18 I can't give you a very clear answer on that.  
19 Q What was your understanding of what  
20 was going to happen now that your eggs had been  
21 retrieved? What was next in the process from your  
22 understanding?  
23 A Once the eggs were retrieved?  
24 Q Yes. What was going to happen?  
25 A That they take the sperm, make the

C. Grossbaum - Direct

153

- 1 Q Did you ever speak to Dr. Hughes or  
2 did your husband after the date of the egg  
3 retrieval procedure?  
4 A No.  
5 Q That was obviously before he did  
6 his testing. The day of the procedure he  
7 obviously couldn't have done his testing yet.  
8 Correct?  
9 A Say it again.  
10 MR. EICHHORN: Strike that. I'll  
11 do it over.  
12 Q From the time that you had your  
13 eggs retrieved from Dr. Liccardi, did you ever  
14 again speak with Dr. Hughes?  
15 A No.  
16 Q Did your husband?  
17 A No.  
18 Q Did you or your husband ever again  
19 speak to anyone at Dr. Hughes' laboratory after  
20 the day of the egg retrieval?  
21 A Did we speak to anybody --  
22 Q At Dr. Hughes' laboratory.  
23 A I don't think so, no.  
24 Q Your understanding was that you  
25 were going to wait until NYU called you, and then



C. Grossbaum - Direct

154

1 you would have the implantation of the most viable  
2 embryos. Correct?

3 A Right. That's what we were told to  
4 do basically.

5 Q After a few days did a phone call  
6 come?

7 A Yes.

8 Q Tell me what happened.

9 A They said -- they told us what day  
10 to come in for implantation.

11 Q Do you remember what day that was?

12 A No.

13 Q According to the records, it was  
14 July 19th, which would have been five days after  
15 the egg retrieval. Does that sound right?

16 A Yes.

17 Q Tell me what happened.

18 A They told us to come for the  
19 implantation. They said some of the embryos that  
20 he tested that were good embryos had cystic  
21 fibrosis, and there were some good ones that did  
22 not have cystic fibrosis but they were carriers  
23 for CF. Did we want to use them? We said yes,  
24 and they implanted me with two I believe, two  
25 embryos, and they said both of them were carriers

C. Grossbaum - Direct

156

1 Q And was there any further  
2 discussion about that issue, other than what you  
3 just relayed to me now? Did you have any  
4 questions?

5 A I don't think I had any specific  
6 questions. I knew what it meant to be a CF  
7 carrier.

8 Q So it was your understanding that  
9 according to the testing that Dr. Hughes' lab had  
10 done, that the two embryos that they were going to  
11 implant in you were both CF carriers?

12 A Yes, and I said as long as it's  
13 just a carrier for CF, then that's fine for me. I  
14 don't care if she's a carrier for the gene.

15 Everybody is a carrier for something.

16 Q Anything else to that discussion  
17 that you haven't told us?

18 A I mean, I think he just spoke  
19 specifically about what he was going to do, what  
20 the procedure was, how long it would take, but  
21 that's it. That's pretty much it.

22 Q Was the implantation done that day?

23 A Yes.

24 Q Did you ever see any written report  
25 from Dr. Hughes' laboratory about his genetic

C. Grossbaum - Direct

155

1 for CF.

2 MR. EICHHORN: Can you read her  
3 answer back slowly?

4 (Whereupon, the previous answer is  
5 read by the Reporter.)

6 Q Who had the discussion that you  
7 related to us?

8 A Dr. Liccardi.

9 Q Was anyone else present for that  
10 discussion other than Dr. Liccardi and you? Was  
11 your husband there?

12 A Yes; I believe he was.

13 Q Anybody else present?

14 A I don't remember.

15 Q And when Dr. Liccardi said that  
16 there were some good embryos that were CF carriers  
17 and asked whether you wanted to go ahead with  
18 those, did you have an understanding of what a CF  
19 carrier was?

20 A Yes. I'm a CF carrier. It just  
21 means that you carry the gene for CF.

22 Q So in other words, it was your  
23 understanding that Rosie could be a CF carrier  
24 such as you or your husband?

25 A Correct.

C. Grossbaum - Direct

157

1 testing?

2 A Yes.

3 Q When?

4 A A long time after, like in the last  
5 year or two I guess.

6 Q After the lawsuit was filed?

7 A I don't remember what exactly --

8 Q After Rosie was born?

9 A Yeah.

10 Q And that was the first time you saw  
11 it?

12 A Yes.

13 Q Did you get to go home that day  
14 after the implantation procedure?

15 A Yes.

16 Q What did Dr. Liccardi say to you if  
17 anything after the procedure?

18 A To just be careful, not to do  
19 anything strenuous, not to do anything heavy, not  
20 to do a lot of physical activity, to just try to  
21 rest, and I had to continue taking progesterone  
22 and then I had to come in very often for blood  
23 work and ultrasounds or sonograms, whichever.

24 Q And it's your recollection that you  
25 returned there for about how long to get blood

C. Grossbaum - Cross by Mr. Leuchtman

162

- 1 MR. LEUCHTMAN: Exhibit 4.  
 2 Q It does say, "However, since this  
 3 is a relatively new procedure the success rate of  
 4 identifying these problems is unclear?"  
 5 A Correct.  
 6 Q You signed this document and your  
 7 husband did as well, and it's relatively clear to  
 8 me -- there's the "relatively" word -- that you  
 9 read these things carefully, and you don't sign  
 10 something that you disagree with or don't  
 11 understand. Correct?  
 12 A Correct, and when I spoke to Hughes  
 13 he made it very clear that while it was  
 14 experimental, the reason it was called  
 15 experimental is because they're awaiting approval.  
 16 It was still considered experimental, but he was  
 17 very clear in stating his experience that he had  
 18 been around long enough to do it, that he felt it  
 19 was a very accurate procedure.  
 20 Q Here is the part I guess I don't  
 21 understand. You spoke to Hughes on the phone, you  
 22 and your husband on one occasion. Correct?  
 23 A Correct.  
 24 Q Can we agree that was on March 25,  
 25 2004?

C. Grossbaum - Cross by Mr. Leuchtman

164

- 1 MR. STEIN: It is anything more  
 2 needed?  
 3 THE WITNESS: No.  
 4 Q Looking at the last paragraph of  
 5 page three, it says, "In order to monitor the  
 6 success rates of this technology, you agree that  
 7 between 10 and 15 weeks of pregnancy you will  
 8 undergo conventional prenatal genetic testing in  
 9 the form of chorionic villus sampling, CVS, or  
 10 amniocentesis."  
 11 It says that, doesn't it?  
 12 A Yes.  
 13 Q And you didn't write anything in  
 14 the margin that says, "I've got to talk to Dr.  
 15 Hughes about this," or voice anything to Dr.  
 16 Hughes in response to this language in this form  
 17 that you saw on June 4. Right?  
 18 A Right.  
 19 Q Do you agree that if Hughes got  
 20 this form back, he had every reason to take this  
 21 as the agreement of you and your husband to  
 22 undergo amniocentesis or CVS?  
 23 MR. STEIN: I object to that. She  
 24 is testifying as a fact witness. She's not here  
 25 to offer opinions as to what Hughes, how Hughes

C. Grossbaum - Cross by Mr. Leuchtman

163

- 1 A Yes.  
 2 Q This was faxed, this document was  
 3 faxed to somebody I presume at NYU -- I guess I'm  
 4 not sure when, but you saw it for the first time  
 5 on June 4, 2004. Correct?  
 6 A I don't know exactly when I saw it  
 7 for the first time, but I guess it seems like  
 8 that. I don't remember the exact date.  
 9 Q Did you carry this thing around for  
 10 a few days before you signed it, or did you read  
 11 it and sign it all at once?  
 12 A I believe I read it and signed it  
 13 all at once, but I don't remember the exact date.  
 14 Q So obviously you didn't question  
 15 Dr. Hughes about anything on this occasion since  
 16 you only spoke to him on one occasion?  
 17 A I spoke to him on the phone about  
 18 these risks, and that was it.  
 19 Q When you signed this, you didn't  
 20 ask Dr. Hughes specifically about this form and  
 21 this context?  
 22 A Specifically about this form?  
 23 MR. STEIN: You've answered this  
 24 question. You did not discuss this form?  
 25 THE WITNESS: Right.

C. Grossbaum - Cross by Mr. Leuchtman

165

- 1 can take it, so that's the objection to the  
 2 question.  
 3 MR. LEUCHTMAN: Are you instructing  
 4 her not to answer?  
 5 MR. STEIN: The words "instruct her  
 6 not to answer" in a Federal case is a very limited  
 7 opportunity, so I will not instruct her not to  
 8 answer, but I point out to you the infirmities of  
 9 your question, and the reason that I object to it  
 10 is so that if you want to stay with the question  
 11 and ask for an answer, please do.  
 12 MR. LEUCHTMAN: I understand your  
 13 instruction, and I'm not going to quibble with you  
 14 one way or the other.  
 15 A I'm not really sure how to answer  
 16 that because we made it clear to him that we  
 17 wouldn't be doing that.  
 18 Q You don't have an answer?  
 19 MR. STEIN: She had an answer.  
 20 It's on the record.  
 21 MR. LEUCHTMAN: She said she  
 22 doesn't know how to answer the question. That's  
 23 fine.  
 24 A I'm saying I don't know what he  
 25 would assume when he read this. I just know what

C. Grossbaum - Cross by Mr. Leuchtman

170

1 phone conversations with Dr. Hughes.

2 MR. STEIN: When you said about  
3 4:00, it's now quarter after three. Do you have  
4 to make a phone call?

5 THE WITNESS: I already arranged  
6 it.

7 Q Let me hand you deposition Exhibit  
8 5, and I will provide Mr. Stein and Mr. Eichhorn  
9 with copies.

10 MR. EICHHORN: Thank you for your  
11 politeness.

12 MR. STEIN: Thank my secretary for  
13 his politeness.

14 MR. LEUCHTMAN: Everybody had a  
15 hand in it I guess.

16 Q Let's go through some of these  
17 items, and you said you reviewed this, and I guess  
18 it should save us some time. You can see from the  
19 first page that there's a summary of conversation,  
20 checks in other words, a checklist that Dr. Hughes  
21 goes through with people such as yourself, goes  
22 through that?

23 MR. STEIN: You're making a  
24 statement of fact about what Dr. Hughes goes  
25 through with people such as herself. This is not

C. Grossbaum - Cross by Mr. Leuchtman

172

1 perfect technology?

2 A Yes.

3 Q Did he tell you it was an  
4 experimental process, that there have been errors  
5 by virtually all groups performing this technology  
6 including his group, and that the objective is to  
7 lower your risk from 25 percent, but lowering it  
8 to zero is not realistic or possible?

9 A Yes.

10 Q Did he tell you it's important that  
11 you understand technology like this can fail, that  
12 zero risk is expected, not promised, not possible  
13 in one cell, one gene, one to two type, overnight  
14 testing?

15 A Yes.

16 Q Did he tell you it would not be  
17 truthful to suggest that his clinic or he are  
18 perfect and that the technology has not produced  
19 errors because neither of those would be a true  
20 statement?

21 A Yes.

22 Q Did he tell you you didn't  
23 necessarily need preimplantation diagnosis, that  
24 you could get pregnant and assume the risk for the  
25 disease, being cystic fibrosis?

C. Grossbaum - Cross by Mr. Leuchtman

171

1 a document that she prepared, so I would object to  
2 questions which contain within them substance of  
3 facts that are not within her knowledge.

4 Q You reviewed this, and I assume it  
5 refreshed your memory about your discussion with  
6 Mark Hughes. Correct?

7 A Correct.

8 Q I described this as a checklist.  
9 Do you understand that has the same function? Do  
10 you agree that that's what it is, whether or not  
11 you agree with all the things Dr. Hughes checked  
12 off?

13 A Yes.

14 Q Did he tell you that he and his lab  
15 were not your physicians?

16 A Yes.

17 Q Did he tell you that they're  
18 scientists who try to develop a complicated  
19 single-cell test so the preimplantation genetic  
20 diagnosis can be used?

21 A Yes.

22 Q Did he say it involved designing  
23 new DNA probes?

24 A Yes.

25 Q Did he tell you this it was not a

C. Grossbaum - Cross by Mr. Leuchtman

173

1 A Yes.

2 Q Did he tell you because single-cell  
3 testing overnight, pushing diagnostic technology  
4 to its limits theoretical and practical, it's  
5 imperative that should a pregnancy ensue  
6 conventional prenatal testing, CVS at around ten  
7 weeks or amniocentesis at around 15 or 16 weeks is  
8 necessary? I'm asking did he tell you that. I'm  
9 not asking for your reaction.

10 A I don't know if he said that  
11 necessarily, but I remember discussing this.

12 Q Did he say it was imperative to do  
13 this, that CVS or amniocentesis be done?

14 A I don't remember him saying it was  
15 imperative. He said that this is what people do  
16 to ensure that the baby does not have that genetic  
17 condition.

18 Q Did he tell you that this was an  
19 experimental technology, that there is some risk,  
20 no matter how well it's done, of just failure of  
21 the technology?

22 A Yes.

23 Q Did he ask you as it says on this  
24 form, "Are all your questions answered," and was  
25 the answer, "Yes, thank you," from apparently your



C. Grossbaum - Cross by Mr. Leuchtman

174

1 husband?

2 A Say that again.

3 Q Did he say, "Are all your questions

4 answered," at some point in this process?

5 A Yes.

6 Q Did your husband Mendel say, "Yes,

7 thank you"?

8 A Yes.

9 Q Do you remember that?

10 A Yes.

11 Q You weren't engaging in this

12 because of a history of infertility. Correct?

13 A Correct.

14 Q Now, there's a note on the second

15 page in a hand that I certainly recognize as that

16 of Dr. Hughes that says, "You do not have to do

17 PGD. Remember, you can just get pregnant and have

18 a prenatal test like CVS or amnio. There are

19 great OB docs in New York City who could do this

20 for you," and did your husband respond to that

21 statement whether or not it's verbatim saying, "We

22 don't like those odds"?

23 A I don't remember him saying that,

24 but it could be that he was referring to something

25 else, but I don't know what he was referring to

C. Grossbaum - Cross by Mr. Leuchtman

176

1 that says, "Need to follow-up with CVS and amnio,"

2 and then the word Evans written in capital letters

3 and circled, and there's a question mark after it.

4 Do you know what that reference is?

5 A No.

6 Q You don't Dr. Evans or anybody

7 named Evans at NYU or having to do with your

8 obstetric or gynecological care or pertaining in

9 any way to this case?

10 A No.

11 Q Do you agree that there's nothing

12 on this page that indicates the Grossbaums

13 categorically refused to go along with amnio or

14 CVS or refused it in any way?

15 MR. STEIN: You're asking me if she

16 can find that and note it here, what she

17 interprets as recording that information? Is that

18 what you're saying?

19 Q In the entire document is there

20 anything that presents resistance by you or your

21 husband to amnio or CVS?

22 MR. STEIN: I object to the form of

23 the question because you're asking her to

24 interpret some things on this page that even you

25 and I don't know what it means. I don't know what

C. Grossbaum - Cross by Mr. Leuchtman

175

1 because I don't know what the odds are. I don't

2 know what that has to do with.

3 Q Hughes says, "Remember you can get

4 pregnant and have a test like CVS or amnio."

5 A I think he said getting pregnant

6 naturally and just winging it.

7 Q And your husband said he doesn't

8 like those odds?

9 A Of just getting pregnant naturally

10 and winging it, the 25-percent chance.

11 Q At that point in the conversation,

12 nobody voiced any objection to the amnio?

13 A I don't know at what point in the

14 conversation we mentioned it, but we did mention

15 that CVS and amnio is not an option.

16 Q He says on the third page, "There

17 have been errors in PGD in the past, even in CF

18 testing, cystic fibrosis. We've had 11 errors in

19 14 years and hundreds of families. It's awful

20 when it does"?

21 A Yes.

22 Q Did he describe medicine as an art

23 and not a perfect science?

24 A Yes.

25 Q There's a line right under that

C. Grossbaum - Cross by Mr. Leuchtman

177

1 "Evans," question mark, means.

2 MR. LEUCHTMAN: He wouldn't

3 document it -- that's correct. I'm helping her to

4 help herself.

5 Q Where? Is there anything that even

6 suggests an opposition to an amnio in this

7 document?

8 A No.

9 Q Did he tell you there could be a

10 failure of the technology that can just happen

11 despite everybody's best efforts and without

12 anybody doing anything wrong?

13 A Yes.

14 Q On page four, Embryo Donation, it

15 says, "They want to think about this more."

16 Do you know why you and your husband opted

17 to ruminate on whether any embryos were going to

18 be donated?

19 A I guess what he was asking was if

20 we wanted to donate the embryos that we weren't

21 using to research, and we didn't know at that time

22 what we wanted to do about that. I think that we

23 signed that we did not want them to go to

24 research.

25 Q Was that for reasons having to do

C. Grossbaum - Cross by Mr. Leuchtman

178

- 1 with your religion?  
 2 A Religion and also personal reasons.  
 3 I just didn't feel comfortable with that.  
 4 Q Have you reviewed over the course  
 5 of time, not just in preparation for this  
 6 deposition, the records of NYU?  
 7 A Yes.  
 8 Q And do you see anything in there  
 9 that suggests that you or your husband voiced an  
 10 opposition to amnio or CVS?  
 11 A Not that I -- no, I don't think so.  
 12 Q Now, do you maintain that Hughes  
 13 and Liccardi and whoever else was dealing with  
 14 your care at either of their institutions  
 15 deliberately left out any documentation of your  
 16 opposition to amnio, especially in light of the  
 17 fact that it's an important aspect of these  
 18 procedures?  
 19 MR. STEIN: I object to the form of  
 20 that question. She has no idea -- there's no way  
 21 she can describe the state of mind of the  
 22 physicians that you've identified, and the use of  
 23 the word "deliberate" is a characterization of a  
 24 state of mind.  
 25 MR. LEUCHTMAN: I'm just asking --

C. Grossbaum - Cross by Mr. Leuchtman

180

- 1 A Correct.  
 2 Q Plus, of course, your own reading,  
 3 prayer and learning?  
 4 A Correct.  
 5 Q At some point in the deposition you  
 6 made the comment that most authorities in your  
 7 sect oppose CVS or amnio. You didn't know what  
 8 the weight of opinion was when you talked to  
 9 Tendler, did you, since he was the only person  
 10 that you talked to?  
 11 A Say that again.  
 12 Q I don't know that I necessarily  
 13 wrote it down verbatim, but I did write down the  
 14 word "most," that most authorities in your branch  
 15 of orthodox Judaism oppose CVS and amniocentesis.  
 16 A Yes.  
 17 Q And since Tendler is the only  
 18 person you talked to, did you do research after  
 19 the fact, after you got pregnant as to the  
 20 position of orthodox Judaism on amniocentesis or  
 21 CVS?  
 22 A No.  
 23 Q Did you do research after Rosie was  
 24 born?  
 25 A After Rosie was born on

C. Grossbaum - Cross by Mr. Leuchtman

179

- 1 it's discovery.  
 2 Q Is that your position as we sit  
 3 here today, that this is all deliberately omitted?  
 4 MR. STEIN: Lawyers take positions.  
 5 Clients answer and testify as to the facts of what  
 6 they know.  
 7 Q Do you believe that?  
 8 MR. STEIN: Her beliefs are not  
 9 relevant.  
 10 MR. EICHHORN: You're getting  
 11 ornery.  
 12 MR. STEIN: Stop the questions like  
 13 that then.  
 14 Q You consulted with Rabbi Tendler in  
 15 weighing your options before going forward with  
 16 in vitro fertilization and PGD. Correct?  
 17 A Yes.  
 18 Q And I believe you've testified that  
 19 before you got pregnant, you didn't discuss those  
 20 procedures with any other spiritual advisor?  
 21 A Yes.  
 22 Q So the entire source of your  
 23 information of what your particular sect of  
 24 orthodox Judaism permitted and did not permit was  
 25 Rabbi Tendler?

C. Grossbaum - Cross by Mr. Leuchtman

181

- 1 amniocentesis and CVS.  
 2 Q Not just amniocentesis and CVS, but  
 3 the position of orthodox Judaism on amniocentesis  
 4 and CVS?  
 5 A No, not -- I wasn't planning on  
 6 having a kid yet, so there wasn't any need to do  
 7 research on that.  
 8 MR. STEIN: He asked after Rosie  
 9 was born, did you do research in your religious  
 10 teaching as to the availability of amnio and CVS  
 11 testing.  
 12 THE WITNESS: Not too much, no.  
 13 Not really.  
 14 Q I'm wondering what the basis that  
 15 the consensus of the opinion is against CVS or  
 16 amnio if you only talked to one spiritual adviser,  
 17 that being Rabbi Tendler.  
 18 A I spoke to Rabbi Tendler because  
 19 he's the authority on medical issues in orthodoxy.  
 20 That's why we went to him.  
 21 Q Did he say whether opinion was  
 22 divided?  
 23 A We didn't ask him what the opinion  
 24 was. We asked him what was the best solution  
 25 according to Jewish law.

C. Grossbaum - Cross by Mr. Leuchtman

186

1 A Chorionic villus sampling that  
2 basically during some time in the pregnancy they  
3 remove some of the DNA from the embryo and check  
4 the genetic make-up or chromosomes to see if that  
5 embryo has cystic fibrosis or whatever you're  
6 testing for, abnormality.

7 Q What do you understand to be the  
8 risk factor to the baby when that procedure is  
9 being done?

10 A That there is some risk of  
11 terminating the pregnancy.

12 Q You said earlier that that risk is  
13 minimal. I take it you stand by that?

14 A Yes.

15 Q And amniocentesis is what, to your  
16 understanding?

17 A Also when they take amniotic fluid  
18 and test that for abnormalities.

19 Q Just so that I'm clear, you had one  
20 phone contact with Mark Hughes. Correct?

21 A Correct.

22 Q Did you ever have any other phone  
23 contacts either before or after the pregnancy with  
24 Hughes or with his laboratory?

25 A I don't think so.

C. Grossbaum - Cross by Mr. Leuchtman

188

1 talking about getting the sperm sample -- was any  
2 contraception used?

3 A Yes.

4 Q Condom?

5 A No, by some form of birth control  
6 but not a condom.

7 Q Tell me.

8 A I was on birth control at some  
9 point, but then at some point I had to stop taking  
10 birth control, and then we had to use I guess  
11 over-the-counter spermicide or something like  
12 that, yes.

13 Q Did you at any time during this  
14 entire period of time have unprotected sex --

15 A No, never.

16 Q Sex without any contraception  
17 effort?

18 A No.

19 Q Have you gotten pregnant at any  
20 time since these events?

21 A No.

22 Q I recognize this is discovery and  
23 you're neither an expert nor qualified as such.

24 Do you have an idea as we sit here what went wrong  
25 if anything in terms of human failure that caused

C. Grossbaum - Cross by Mr. Leuchtman

187

1 Q I'm a little unclear, and I hate to  
2 go back over this. When is it during this whole  
3 process that you were specifically told not to  
4 engage in sexual relations with your husband?

5 A I don't know exactly. I know at  
6 certain times with different hormones or between  
7 when the eggs were retrieved until they did the  
8 implantation, but I don't remember -- I don't  
9 remember.

10 Q And you've indicated at least at  
11 some point in July you did have sex with your  
12 husband when it was not explicitly prohibited?

13 A I said it was possible. I don't  
14 remember specific cases. We did it when we had to  
15 get the sperm sample, but I don't remember  
16 specific cases of it. I don't have -- I can't  
17 give you a specific instance.

18 Q After you knew you were pregnant,  
19 did you have sexual relations with your husband?

20 A After a certain point where they  
21 told me I was allowed to, probably. In the nine  
22 months of pregnancy I would say yes. I can't give  
23 you certain specific instances either.

24 Q When you had sex with your husband  
25 or believed that you did in July -- and I'm not

C. Grossbaum - Cross by Mr. Leuchtman

189

1 you to become pregnant with a daughter who ended  
2 up having cystic fibrosis?

3 MR. STEIN: Since you recognize  
4 that that question calls for an answer from an  
5 expert to the cause of a certain medical  
6 condition, that can only be known by either what  
7 somebody told her or which could only come me --  
8 couldn't only come from me but come from others,  
9 so the question is totally inappropriate in a  
10 discovery proceeding.

11 Q Well, you've sued an individual and  
12 two entities, maybe more than two entities, I  
13 presume because you believe that there's some  
14 human failure that led you to have a baby with CF.  
15 Correct?

16 A Yes, correct.

17 Q What do you understand that failure  
18 to be?

19 A I don't know.

20 MR. LEUCHTMAN: I think that's all  
21 I have at this point.

22 REDIRECT EXAMINATION BY MR. EICHORN:

23 Q Does your sect of orthodox Judaism  
24 approve of birth control?  
25

C. Grossbaum - Redirect

190

- 1 A In general you would get Halachic  
2 allowance, allowance for that, for specific  
3 circumstances. It's not something that you would  
4 use because you're not interested in having kids.  
5 There would need to be a reason, and you would  
6 discuss it with a rabbinical authority.  
7 Q Is that because ordinarily your  
8 sect of your religion believes in advocating  
9 procreation and inhibiting anything else?  
10 A Correct.  
11 Q What was the kind of exemption you  
12 said you would need to ask for? You used a word.  
13 A For every circumstance you would  
14 speak to a rabbi and discuss your circumstance,  
15 and then the rabbi would, you know, tell you what  
16 to do.  
17 Q You used a word. I could tell it  
18 was a word that I didn't understand.  
19 A Halachic.  
20 Q What does that mean?  
21 A It means just according to Jewish  
22 law. That's all.  
23 Q You would have to seek a  
24 Halachic--  
25 A Authority.

C. Grossbaum - Redirect

192

- 1 she was -- we didn't live in New Jersey before she  
2 was born. We lived in New York.  
3 Q You moved here after she was born?  
4 A No.  
5 Q What rabbi did you seek out for you  
6 to obtain approval to use birth control?  
7 A That was discussed when we spoke  
8 with Rabbi Tendler.  
9 Q You had spoke to Rabbi Tendler  
10 before about these PGD issues and in order to talk  
11 about birth control?  
12 A Yes. It was all in the same  
13 conversation.  
14 Q You only spoke to him once?  
15 A Yes.  
16 Q And when was that? What year?  
17 A 2002 I guess, before I got married.  
18 Q I thought you spoke to Rabbi  
19 Tendler after getting to him through a few other  
20 rabbis. Am I wrong about that?  
21 A Yes.  
22 Q I thought you had a chain of rabbis  
23 that led you to him.  
24 A Yes.  
25 Q And that chain of Rabbi was who,

C. Grossbaum - Redirect

191

- 1 Q Now, I think you said that you had  
2 been using birth control and then switched to a  
3 spermicide, so when you said "birth control," did  
4 you mean the pill?  
5 A Yes.  
6 Q Did you speak to your rabbi in  
7 order to get this exemption to go on birth  
8 control?  
9 A Yes.  
10 Q And that's the rabbi of a synagogue  
11 that's a mile away?  
12 A No, we don't really have a personal  
13 relationship with him.  
14 Q Is that Zalman Wilshanski?  
15 A The rabbi of the synagogue.  
16 Q A mile away?  
17 A Yes.  
18 Q I want to make sure my notes are  
19 right because I have scribbling all over. That's  
20 who that person is. You said you don't really  
21 have a personal relationship with him?  
22 A No.  
23 Q Before Rosie was born, how often  
24 did you attend synagogue there?  
25 A We didn't live in New York before

C. Grossbaum - Redirect

193

- 1 from who?  
2 A Rabbi Markowitz suggested that we  
3 meet with him, and he set up the meeting.  
4 Q And this occurred in 2002?  
5 A I believe so.  
6 Q Are you saying at that time in 2002  
7 you spoke about the issue of you getting approval  
8 to go on birth control and the other issues that  
9 you discussed before about amniocentesis and CVS  
10 and abortion?  
11 A Yes.  
12 Q You talked about all those things  
13 at once?  
14 A Yes.  
15 Q What was your reason for asking him  
16 for Halachic authority to be allowed to use birth  
17 control?  
18 A What was my reason?  
19 Q Don't you need to give him a reason  
20 for him to allow you that exemption?  
21 A We would discuss the whole idea of  
22 what we would do, and he understood why we needed  
23 -- it was part of the whole conversation of both  
24 being carriers for CF. We didn't want to just  
25 wing it and get pregnant naturally with CF, so we



C. Grossbaum - Redirect

194

- 1 would do the IVF.
- 2 Q So if I understand right, because
- 3 you knew you were both carriers, you talked to him
- 4 about it, and he said it was okay if you use birth
- 5 control until you do IVF?
- 6 A Correct.
- 7 Q Is Rabbi Tendler the rabbi of a
- 8 particular synagogue?
- 9 A I believe he is, but I don't know
- 10 the name of it.
- 11 Q If I wanted to find him, do you
- 12 have an address for him?
- 13 A Not off the top of my head, no.
- 14 Q But could you get his address?
- 15 A Yes.
- 16 Q \*I'm going to ask that you supply
- 17 to Mr. Stein the whereabouts of Rabbi Tendler.
- 18 He's in New York State. Correct?
- 19 A Yes.
- 20 Q I'm going to ask that you supply
- 21 that to him, and ask Mr. Stein to supply it to me.
- 22 MR. EICHHORN: Thank you.
- 23
- 24 RECROSS-EXAMINATION BY MR. LEUCHTMAN:
- 25 Q Did you ever -- and I don't recall

C. Grossbaum - Recross by Mr. Leuchtmann

196

- 1 follow-up amniocentesis or CVS would be essential
- 2 in this setting. The couple understands this."
- 3 Do you recall Dr. Hughes saying that in
- 4 this --
- 5 A About the amnio?
- 6 Q Yes.
- 7 A In this report? No, I don't ever
- 8 recall seeing that report.
- 9 Q And you're saying that is not
- 10 correct, that you did not understand that amnio or
- 11 CVS was essential in this clinical picture?
- 12 A Specific to this report?
- 13 Q Yes.
- 14 A No.
- 15 MR. LEUCHTMAN: Thank you.
- 16
- 17 FURTHER REDIRECT EXAMINATION BY MR. EICHHORN:
- 18 Q Dr. Hughes issued a report dated
- 19 July 19, three pages long, and in that report he
- 20 says at the end -- I'm going to read it for you
- 21 and then I'm going to ask you a question about it.
- 22 The last sentence of this report says, "Should a
- 23 pregnancy ensue, Chaya Morgenstern has agreed to
- 24 undergo conventional prenatal testing to confirm
- 25 these microgenomic experimental results."

C. Grossbaum - Recross by Mr. Leuchtmann

195

- 1 your answer and it's been a long day I'm sure for
- 2 all of us, but did you ever see Dr. Hughes' final
- 3 report on July 19?
- 4 A I don't know if I saw his -- I saw
- 5 reports. I don't know who specifically they were
- 6 from.
- 7 Q The cover sheet of his final
- 8 report -- and maybe it's a fax transmittal to the
- 9 NYU IVF team, "Attached is the final data for PGD
- 10 results for your patients Chaya Morgenstern and
- 11 Menachem Grossbaum PGD for two mutations in the
- 12 CFTR July 2004 IVF cycle," and then it goes on.
- 13 I'm asking you first of all if you've ever seen
- 14 this. "If the couple chooses a transfer with this
- 15 partial data set those samples disclaim, the gene
- 16 allele at G542X would be predicted unaffected
- 17 assuming no allele dropout. However, allele
- 18 dropout is possible in compound heterozygote
- 19 testing such as this and even more likely given
- 20 the embryo quality."
- 21 Do you remember any of that, that there
- 22 was a risk of allele dropout, in other words, the
- 23 embryo changing while it was in utero?
- 24 A Yes.
- 25 Q He goes on to say, "Therefore,

C. Grossbaum - Redirect

197

- 1 Is it your testimony that that statement
- 2 in this report is untrue?
- 3 A I didn't say that I was going to
- 4 get testing. I understand that they said that is
- 5 what is suggested, but I never said that I would
- 6 do it.
- 7 Q This statement in this report says
- 8 you have agreed to undergo it, so my question to
- 9 you is, are you saying that this statement in this
- 10 report is untrue?
- 11 A Yes.
- 12 MR. LEUCHTMAN: Off the record.
- 13 (A discussion takes place off the record.)
- 14 MR. LEUCHTMAN: Just for the
- 15 record, this is a four-page document consisting of
- 16 a cover page and three-page report all dated July
- 17 19, 2004.
- 18 MR. EICHHORN: Are you done?
- 19 MR. LEUCHTMAN: I just wanted to
- 20 jump in.
- 21 MR. EICHHORN: That's what I'm
- 22 asking. You're done or you're still going?
- 23 MR. LEUCHTMAN: I am done.
- 24 BY MR. EICHHORN:
- 25 Q Do you remember answering written



# **EXHIBIT 10**

# Preimplantation Genetic Diagnosis

## Patient Informed Consent

### Consent for Participation in Research Activities

**Title of Project:** Preimplantation Diagnosis for Families with High Genetic Risk

**About this informed consent:** An informed consent is really a *process* rather than just a form. This is why we have spent considerable time with you discussing all of your reproductive options, not just those involving this research protocol. By now you should know that there are more conventionally accepted medical options to having a genetically unaffected baby. For personal reasons you have found these other "traditional" options unsatisfactory for your family and you are considering enrollment in the Preimplantation Genetic Diagnostic (PGD) program. From the information you have received, you should be familiar with both *in vitro* fertilization and the molecular diagnosis of the inherited disease in your family. You should understand that this is a research technology, and in no way should be construed as "routine" medical care. It is important that you feel comfortable with, and knowledgeable about, the information that we have given you concerning this research. Below is a summary of the most pertinent aspects of the PGD-IVF program. *You should feel free to ask any and all questions you have about it.* If you are undergoing the initial DNA testing or reproductive aspects of this process at a center distant from our program in Michigan, your doctors in genetics and reproductive medicine are logically your first source of information. However, we are available to assist you in understanding this process, so please call us if you have questions.

**Overview:** You are invited to participate in a research study. *In vitro* fertilization and embryo transfer is a routine procedure offered to infertile couples to assist them in obtaining a pregnancy. While you are not necessarily infertile, we know from prior genetic studies that the two of you have a high likelihood of bearing a child with a severe genetic disorder, and/or you have a member of your family who could potentially benefit from this research. Our research combines the technologies of *i) in vitro* fertilization (IVF); *ii) micromanipulation and embryo biopsy*; *iii) genetic analysis of the biopsy material for potentially abnormal gene(s) and*; *iv) uterine transfer of the potentially normal embryo(s) to the donor mother.* Biopsy is the process by which a single cell(s) is removed from the embryo for genetic analysis. Each of the steps involved in this protocol is outlined below.

**Background Genetics:** You are at a significantly increased risk of conceiving a child with a severe genetic disorder, or you have a child who could benefit from single cell DNA diagnostics. It is important that you understand that you have other reproductive options not involving this research protocol. You could elect not to have any (additional) children. Alternatively, adoption is a choice of many couples. Others choose artificial insemination or oocyte (egg) donation by an anonymous donor who has tested negative for the gene mutation. Many couples decide to assume the genetic risk, begin a pregnancy by natural means, and test prenatally by amniocentesis or chorionic villus sampling. You have received private counseling regarding these options.

13135776200 13135776200  
WAYNE STATE GENETICS

250 P04 MAY 02 '02 09:

If you elect to participate in this research project, it may be necessary for us to retest your blood to confirm the genetic information you have as well as to see if our methods can detect the particular genetic error in your family. Sometimes, the testing that has already been performed for your family is not suitable for clinical use, and we need to repeat it and confirm the results. (Please initial)

Man Woman

mmg CRM-G

I give permission for chromosome/DNA testing to be performed on me, [and my minor child(ren) if medically appropriate], in order to identify or confirm the genetic information necessary to participate in this research study.

mmg CRM-G

I understand that these genetic methods cannot predict all birth defects or genetic disorders. The objective will be to test for just the specific inherited condition(s) involving my family.

**In Vitro Fertilization:** IVF has resulted in the birth of over a million babies around the world to couples who are otherwise infertile. While you are not necessarily infertile, most of these same medical techniques and procedures will be used in obtaining the eggs and fertilizing them outside of the body. You have received personal reproductive counseling by your physician(s), and again by the IVF counselor-coordinator. IVF itself is not considered "research" since it is in routine practice throughout the world. However, there are risks involved that are important for you to understand. You have read, been counseled, asked any questions you might have, and signed the Consent Form(s) pertaining to (Please initial:

Man Woman

mmg CRM-G

Disclosure and Consent to *In Vitro* Fertilization and embryo transfer (or similar such document at your clinic)

mmg CRM-G

Disclosure and Consent for embryo cryopreservation (freezing) (or similar such document at your clinic; if appropriate)

When ovarian stimulation is complete her eggs will be retrieved by transvaginal ultrasound and described on the separate IVF consent form. The retrieved eggs are then inspected and graded prior to insemination with the man's sperm. The laboratory procedures are state-of-the-art and subject to modification at the discretion of the IVF team to improve the likelihood of pregnancy.

**Biopsy of the Pre-embryo:** The experimental portion of this research project begins at this step. Approximately three days after fertilization, a biopsy will be performed with the removal by micromanipulation of one or two cells (blastomeres) from the 4-8 cell embryo. After the micromanipulation, the embryos will either be returned to culture or frozen to allow in-depth genetic analysis of the biopsied cell(s). The genetic findings from this research

13135776200 WAYNE STATE GENETICS

250 P05 MAY 02 '02 09:1

study is combined with information regarding the embryology (the quality of the dividing cells), and then you and your Reproductive Endocrinologist(s) decide which, if any, of the embryos will be transferred to the uterus to begin the pregnancy. Embryos that have are not genetically or morphologically suitable for uterine transfer are not transferred.

Many families who have undergone this process before you have donated their unused embryos in order for your doctors to develop new DNA/chromosome tests which, in turn, help other couples. If you choose to donate your untransferred embryos to research, they will not be further grown as embryos and they will not be given to any other patient. Your doctors will use them in an ethically responsible way to understand more about the disease in your family and to develop new PGD tests to assist future families needing this technology. Untransferred embryos that are not cryopreserved for us will be: (Please initial your choice)

Wife Husband

CRMG mmf

Used for research purposes at the discretion of the investigator, to understand the molecular basis of inherited birth defects and to assist in the development of PGD testing on other diseases for other families.

CRMG mmf

Allowed to dissolve in culture and be discarded.

**Background Information on the Risks Involved:** The post fertilization time period is an early stage in embryo development, before it has implanted into the mother's uterus. At this early stage the embryo is relatively undifferentiated. This means that the cells seem to have identical potential to ultimately become the placenta, membranes, fetus or any organ system. Numerous animal studies and also human twin studies have shown that the microsurgery of the embryo does not seem to affect the normal development of the baby. This biopsy procedure has been performed on embryos at centers in the United States and around the world beginning in 1991. Currently, the combination of the biopsy procedure with genetic testing can identify some of the characteristics that would lead to birth defects and genetic disease. However, since this is a relatively new procedure, the success rate of identifying these problems is unclear. Thus far, there is no evidence that deleterious effects have occurred from the biopsy process. At present, we are uncertain of all of the potential risks that could occur as a result of the microsurgery.

In order to monitor the success rates of this technology, you agree that between ten and fifteen weeks of pregnancy you will undergo conventional prenatal genetic testing in the form of chorionic villus sampling (CVS) or amniocentesis. The sample will be used to confirm the predicted PGD test results. If any abnormality of the fetus is identified, or risk of genetic disorder is recognized, the implications of these findings will be discussed with you in detail.

**Specific Points Regarding Participation in this Research Project**

This research protocol carries some potential risks. Below is a list of specific points pertaining to these procedures. Only those three marked with an asterisk (numbers 1, 5 and 6) are new to the preimplantation genetics protocol. The remaining points pertain to standard IVF, should also be part of your separate consent form(s) pertaining to the IVF procedures, and are included here for completeness:

1. \*The purpose of this procedure is for us to obtain a pregnancy and to have a child that does not have the severe genetic disease for which we are at high risk, and/or to assist a child we have currently that could benefit from this research procedure via cord blood transplantation;
2. We will be enrolled in standard IVF protocols as conducted by our reproductive endocrinologists and embryologists. The normal and high standards of care in this medical setting will be used. We have read and understand the risks and benefits of ovulation-induction as outlined on a separate consent form(s);
3. If pregnancy occurs, there is a risk of multiple gestation (multiple fetuses), miscarriage, ectopic pregnancy such as in the fallopian tube requiring further treatment, and abnormalities in the fetus/child such as, but not limited to, congenital anomalies or embryonic/fetal death or stillbirth;
4. Fertilization may fail to occur, the embryos may fail to develop or grow, or the growth may be abnormal;
5. \*A laboratory or transportation accident may result in loss or damage to the egg, sperm or embryos. Specific data provided to us by others prior to your testing could be inaccurate, leading potentially to a misdiagnosis. The specific genetic test used in this PGD protocol may fail to diagnose correctly the embryo as having (or not having) the DNA/Chromosome abnormality or molecular markers of interest.
6. \*The genetic testing will be performed on a single cell. This pushes the molecular technology to its theoretical and practical limits. This research is relatively new and not widely available. There is a possibility that a misdiagnosis may be made on any one of the embryos prior to uterine transfer, or that the actual process of testing may adversely affect the development of the fetus;
7. Any or all of the embryo(s) may not survive freezing or thawing if cryopreserved;
8. The pregnancy may not be normal even if implantation occurs in the uterus. There is a risk for loss of the fetus or neonate, and there is an unknown risk for congenital abnormalities or other problems with the newborn.



**Confidentiality.**

You should understand every effort will be made to maintain the confidentiality of your medical records and research material within legal limits; however, absolute confidentiality cannot be guaranteed. You also understand that your names and other information that could be associated with your family will not be disclosed without your expressed written consent. It will be necessary for the doctors and scientists involved directly in your care to exchange medical information about you, and you will have the opportunity to approve or deny this exchange of material. Data generated within the PGD program will be presented in scientific format with your anonymity maintained, unless you authorize otherwise in writing.

**Risk & Injury.**

IN THE EVENT OF INJURY RESULTING FROM THIS RESEARCH, THE UNIVERSITY AND/OR THE DETROIT MEDICAL CENTER, ARE NOT ABLE TO OFFER FINANCIAL COMPENSATION NOR ABSORB THE COSTS OF YOUR MEDICAL TREATMENT. HOWEVER, NECESSARY FACILITIES, EMERGENCY TREATMENT AND PROFESSIONAL SERVICES WILL BE AVAILABLE TO RESEARCH SUBJECTS, JUST AS THEY ARE TO THE COMMUNITY GENERALLY. MY SIGNATURE BELOW ACKNOWLEDGES MY VOLUNTARY PARTICIPATION IN THIS RESEARCH PROJECT, BUT IN NO WAY RELEASES THE INVESTIGATORS FROM THEIR PROFESSIONAL AND ETHICAL RESPONSIBILITY TO ME.

**Final Comments.**

If you have undergone or will be undergoing diagnostic and therapeutic care (DNA/chromosome testing, reproductive care etc) at another institution (University, Clinic, Hospital, Company) not formally affiliated with Wayne State University, it is likely that you will have a separate consent form pertaining to that institution. This Informed Consent does not supercede or replace the one you accept from that/those institution(s).

You understand that your participation in this procedure is voluntary and that your refusal to participate will involve no penalty or loss of benefits to which you would otherwise be entitled. If you agree to participate, you (or your legal representative) may change your mind about participating at any time.

You understand that your signature indicates that you have read and understand the above information. You have discussed this procedure in detail with the Principle Investigator or your geneticist and/or genetic counselor, and your reproductive endocrinologist/gynecologist. Your signature below indicates that you wish to have your oocytes fertilized for the purpose of preimplantation genetic analysis.

If you have any additional questions later, you can contact any of your doctors.

Cheryl R. Grossman 6/04/04

Woman's Signature

Date

Man's Signature

Date

Mark Hughes 7/16/04

Principal Investigator

Date

[Signature] 6/14/04

Witness

Date

# **EXHIBIT 11**

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY  
DOCKET NO. 07-CV-359

3 -----  
4 CHAYA GROSSBAUM and MENCHEM )  
5 GROSSBAUM, her spouse, )  
6 individually, as guardians ad )  
7 litem of the infant, ROSIE )  
8 GROSSBAUM, )  
9 Plaintiffs, ) DEPOSITION OF:  
10 v. ) FREDERICK LICCIARDI  
11 )  
12 GENESIS GENETICS INSTITUTE, )  
13 L.L.C., of the State of Michigan, )  
14 MARK R. HUGHES, M.D., NEW YORK )  
15 UNIVERSITY SCHOOL OF MEDICINE and )  
16 NEW YORK UNIVERSITY HOSPITALS )  
17 CENTER, both corporations in the )  
18 State of New York, ABC )  
19 CORPORATIONS 1-10 and JOHN DOE )  
20 1-10, )  
21 -----

22 T R A N S C R I P T of the stenographic notes of  
23 the proceedings in the above-titled matter, as taken by  
24 PHILIP A. FISHMAN, a Certified Shorthand Reporter and  
25 Notary Public of the State of New Jersey, held at the  
offices of Dr. Frederick Licciardi, 660 First Avenue,  
New York, New York, on Wednesday, March 11, 2009,  
commencing at 3:00 in the afternoon.

21

22

23 PHILIP A. FISHMAN  
24 COURT REPORTING AGENCY  
25 89 Headquarters Plaza North  
14th Floor  
Morristown, New Jersey 07960  
(973)285-5331 - FAX (732)605-9391

1 A P P E A R A N C E S :

2

3 NUSSBAUM, STEIN, GOLDSTEIN, BRONSTEIN & KRON, ESQS.  
4 BY: LEWIS STEIN, ESQ.  
5 Appearing on behalf of the Plaintiffs

6

7 STEPHEN N. LEUCHTMAN, P.C.  
8 BY: STEPHEN N. LEUCHTMAN, ESQ.  
9 Appearing on behalf of the Defendant Genesis Genetics  
10 Institute, L.L.C., and Dr. Hughes

11

12

13 MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, ESQS.  
14 BY: R. SCOTT EICHHORN, ESQ.  
15 Appearing on behalf of the Defendants New York  
16 University School of Medicine and New York University  
17 Hospitals Center

18

19

20 \* \* \*

21

22

23

24

25

15:48:30 1 fragmentation or granularity?  
 15:49:33 2 A. Yes.  
 15:49:33 3 Q. What does "granularity" mean?  
 15:49:33 4 A. "Granularity" means if you look inside a cell and  
 15:49:33 5 see dark areas or granular areas.  
 15:49:40 6 Q. And that's a negative characteristic for ultimate  
 15:49:45 7 gestation?  
 15:49:45 8 A. We are not sure. We make note of it, but we are  
 15:49:49 9 not sure if that means much.  
 15:49:51 10 Q. Okay. And what about after "Embryo Description,"  
 15:49:59 11 we have a column known as "AH"?  
 15:50:01 12 A. That stands for "assessed hatching," which  
 15:50:05 13 "assessed hatching" means opening the shell, as I have  
 15:50:08 14 described, and it also in handwritten is "right biopsy"  
 15:50:13 15 above that.  
 15:50:15 16 Q. Okay. And we only have checkmarks.  
 15:50:19 17 Can I assume then that those cells with  
 15:50:24 18 checkmarks were biopsied?  
 15:50:25 19 A. Yes.  
 15:50:25 20 Q. What's the last column?  
 15:50:27 21 A. "Disposition," what do we end up doing with the  
 15:50:31 22 embryo, and "C" means "culture" and "D" means "discard"  
 15:50:36 23 and "R" means "research."  
 15:50:38 24 Q. Okay. Now, we have a day four?  
 15:51:13 25 MR. EICHHORN: What does "R" mean?

15:52:29 1 cells or the quality of the embryos at the time that the  
 15:52:36 2 cells are sent to Genesis Genetics for evaluation?  
 15:52:42 3 A. We just make note if they are intact or not, in  
 15:52:45 4 other words, if the cell was ruptured or not during the  
 15:52:47 5 biopsy procedure.  
 15:52:50 6 Q. Are there any other characteristics of those  
 15:52:53 7 cells that are sent that are important to determine  
 15:52:56 8 their utility and later implantation?  
 15:52:59 9 A. No.  
 15:52:59 10 Q. Okay. What is the -- after the biopsy is taken  
 15:53:13 11 and the cells sent to Genesis Genetics -- by the way,  
 15:53:17 12 how are they sent?  
 15:53:18 13 A. I don't know.  
 15:53:22 14 Q. I take it that you, as a doctor, are not involved  
 15:53:26 15 in that mechanism by which these things go from a  
 15:53:30 16 laboratory to laboratory?  
 15:53:30 17 A. Correct.  
 15:53:32 18 Q. What's the next involvement of NYU in connection  
 15:53:37 19 with the cells that are sent to Genesis Genetics?  
 15:53:49 20 MR. EICHHORN: You mean after they send them  
 15:53:49 21 what do they do next with them?  
 15:53:49 22 MR. STEIN: Right.  
 15:53:49 23 What's the next involvement of NYU with  
 15:53:49 24 regard to either those cells or the results of  
 15:53:50 25 the analysis? What's the next thing that

38

15:51:15 1 MR. STEIN: "Research."  
 15:51:18 2 THE WITNESS: "Research."  
 15:51:26 3 I don't have a day four.  
 15:51:27 4 Generally, we do not assess the embryos on  
 15:51:31 5 day four. Sometimes we do, but we may not.  
 15:51:33 6 Q. Would day three, when there is a biopsy, would  
 15:51:37 7 those cells then be sent to the laboratory, Genesis  
 15:51:41 8 Genetics, for analysis?  
 15:51:42 9 A. Yes.  
 15:51:42 10 Q. Now, at that time all of the cells are just  
 15:51:49 11 single cells from each embryo. Is that correct?  
 15:51:53 12 MR. EICHHORN: I am sorry.  
 15:51:54 13 Could you read that back?  
 15:51:55 14 (Whereupon, the court reporter reads as  
 15:52:05 15 requested.)  
 15:52:05 16 MR. STEIN: Let me withdraw that question.  
 15:52:07 17 I am going to make it a more precise  
 15:52:09 18 question.  
 15:52:09 19 MR. EICHHORN: Okay.  
 15:52:10 20 Q. Do I understand then, when the biopsy takes  
 15:52:12 21 place, a single cell has been retrieved from each of the  
 15:52:20 22 embryos that are designated and sent for analysis to  
 15:52:20 23 Genesis Genetics?  
 15:52:21 24 A. Yes.  
 15:52:21 25 Q. Is there any evaluation of the quality of the

40

15:53:53 1 happens?  
 15:53:53 2 A. We receive information from the testing  
 15:53:55 3 laboratory about the cells.  
 15:53:56 4 Q. And who gets that information?  
 15:53:59 5 A. The laboratory.  
 15:54:00 6 Q. The laboratory here at NYU?  
 15:54:02 7 A. Yes.  
 15:54:03 8 Q. What does the laboratory do with that  
 15:54:04 9 information?  
 15:54:05 10 A. They examine the information and then they will  
 15:54:09 11 bring the findings to one of the physicians.  
 15:54:11 12 Q. Okay. In connection with Mrs. Grossbaum, to whom  
 15:54:18 13 were those findings brought?  
 15:54:19 14 A. To me.  
 15:54:21 15 Q. And are those findings of the laboratory, that  
 15:54:27 16 is, the laboratory that did the genetic analysis,  
 15:54:30 17 included in the chart?  
 15:54:31 18 A. Yes.  
 15:54:33 19 Q. And do you have those results in this chart?  
 15:54:35 20 A. Yes.  
 15:54:36 21 Q. And after you get the results, do you make a  
 15:54:39 22 determination as to whether the embryos are -- where was  
 15:54:44 23 that?  
 15:54:44 24 After you get the results of the analysis by  
 15:54:48 25 Genesis Genetics, was it you who made the determination



15:54:51 1 as to the suitability of any embryos for invitro  
 15:54:58 2 fertilization?  
 15:54:58 3 A. That determination is made in conjunction with  
 15:55:06 4 myself and the laboratory person who is in charge of the  
 15:55:10 5 case.  
 15:55:06 6 Q. And who was the person -- laboratory person in  
 15:55:10 7 charge of the eggs here?  
 15:55:11 8 A. Alexis Adler.  
 15:55:15 9 MR. LEUCHTMAN: I am sorry.  
 15:55:16 10 I didn't catch that.  
 15:55:17 11 THE WITNESS: Alexis Adler.  
 15:55:19 12 MR. LEUCHTMAN: Thank you.  
 15:55:20 13 Q. Can you tell me a little bit Alexis Adler, what  
 15:55:22 14 is her background and qualifications?  
 15:55:24 15 A. Alexis Adler has been doing invitro fertilization  
 15:55:28 16 since before 1992, probably before 1988.  
 15:55:33 17 I don't know the exact date.  
 15:55:36 18 Q. Okay. And is she a nurse? Is she -- does she  
 15:55:42 19 have any other special training other than experience  
 15:55:47 20 here in the invitro fertilization laboratory?  
 15:55:50 21 A. That's her role, laboratory personnel.  
 15:55:52 22 Q. Okay. So then -- but you are, I take it, the  
 15:55:56 23 ultimate determinant as to whether the embryos are  
 15:56:00 24 suitable for invitro fertilization. Is that correct?  
 15:56:04 25 A. That is correct.

42

15:56:06 1 Q. Okay. Do you have the record of what was  
 15:56:07 2 reported to you by Genesis Genetics?  
 15:56:12 3 A. Yes.  
 15:56:13 4 MR. EICHHORN: I wonder if we should close  
 15:56:15 5 that window. It's getting pretty loud.  
 15:56:19 6 MR. STEIN: Were you -- if you would like to  
 15:56:21 7 do it.  
 15:56:22 8 MR. LEUCHTMAN: Some kind of interference.  
 15:56:24 9 I am getting a sort of buzzing kind of  
 15:56:26 10 noise.  
 15:56:28 11 Does somebody have something near the  
 15:56:28 12 speaker?  
 15:56:29 13 THE WITNESS: A jackhammer.  
 15:56:31 14 MR. EICHHORN: Yes. Some power equipment  
 15:56:34 15 outside.  
 15:56:37 16 MR. LEUCHTMAN: Okay. It's only been doing  
 15:56:39 17 it the last couple --  
 15:56:41 18 MR. EICHHORN: The doctor closed the window.  
 15:56:44 19 MR. LEUCHTMAN: That's much better.  
 15:56:48 20 MR. EICHHORN: Thank you.  
 15:56:49 21 THE WITNESS: Sure.  
 15:56:53 22 MR. EICHHORN: Did we have a question  
 15:56:53 23 pending?  
 15:56:54 24 MR. STEIN: Yes.  
 15:57:41 25 MR. STEIN: Would you mark this a number,

15:57:42 1 please.  
 15:58:21 2 MR. LEUCHTMAN: You are marking the page.  
 15:58:23 3 Is this the page, Morganstern Grossbaum  
 15:58:26 4 results?  
 15:58:29 5 MR. STEIN: That's correct.  
 15:58:30 6 Q. Doctor, I show you a document which we have  
 15:58:32 7 marked P-6 for identification and ask you if you have  
 15:58:38 8 the actual chart copy of that document?  
 15:58:41 9 A. Yes, I do.  
 15:58:41 10 Q. And is that an accurate photocopy?  
 15:58:43 11 A. It is.  
 15:58:44 12 Q. Okay. Now, Doctor, is this the report that you  
 15:58:50 13 received from Genesis Genetics?  
 15:58:53 14 A. Yes.  
 15:58:53 15 Q. Did you receive anything else from Genesis  
 15:58:57 16 Genetics regarding the studies that were done at Genesis  
 15:59:02 17 Genetics?  
 15:59:02 18 A. This was the page that I used.  
 15:59:05 19 Q. Okay. But you didn't answer the question.  
 15:59:08 20 A. Yes, there are other records from Genesis in the  
 15:59:12 21 chart.  
 15:59:13 22 Q. Okay. Regarding the results of this study?  
 15:59:15 23 A. Yes.  
 15:59:15 24 Q. Could you show me what they are?  
 15:59:17 25 A. Sure.

44

16:01:25 1 MR. EICHHORN: I think those were these.  
 16:01:27 2 He is referring to these, which I sent to  
 16:01:30 3 him.  
 16:01:31 4 THE WITNESS: I see.  
 16:01:32 5 MR. STEIN: Okay. Let me see what you are  
 16:01:34 6 referring to.  
 16:01:34 7 MR. EICHHORN: Well, there is a letter here.  
 16:01:36 8 I can show you what the documents are.  
 16:01:39 9 The letter is from the person at the  
 16:01:40 10 hospital, so I will take that off, but these are  
 16:01:47 11 the records I sent to him.  
 16:01:57 12 MR. STEIN: Well, at this juncture there is  
 16:01:59 13 a question on the table.  
 16:02:00 14 Q. And that question is, what is in the chart from  
 16:02:05 15 Genesis Genetics regarding their studies of this  
 16:02:10 16 patient's embryos other than the page which we have  
 16:02:14 17 marked P-6 for identification?  
 16:02:16 18 A. There is nothing else.  
 16:02:17 19 Q. Okay. May I see -- may I see the chart, please.  
 16:02:27 20 MR. EICHHORN: Don't forget to give those  
 16:02:29 21 back to me.  
 16:02:30 22 MR. STEIN: We won't.  
 16:02:36 23 Q. Okay.  
 16:02:45 24 MR. STEIN: I am going to put a sticker on  
 16:02:47 25 this page and then I am going to show it to you.

16:15:56 1 A. Yes.  
 16:15:56 2 Q. Did that discussion take place?  
 16:15:56 3 A. Yes.  
 16:15:56 4 Q. And is there a record of that discussion in your  
 16:16:02 5 chart?  
 16:16:02 6 A. There is not, but it's -- I wouldn't do a  
 16:16:06 7 transfer in a scenario like this without having a  
 16:16:10 8 discussion about it.  
 16:16:11 9 Q. And what does the "scenario like this" mean?  
 16:16:14 10 A. Where there is an embryo biopsy and results need  
 16:16:17 11 to be discussed, et cetera.  
 16:16:18 12 Q. Do you discuss it with every family that has an  
 16:16:24 13 analysis of PGD testing for a potential cystic fibrosis  
 16:16:29 14 baby?  
 16:16:30 15 A. Yes.  
 16:16:31 16 Q. And what did you tell the family here?  
 16:16:36 17 A. That she has had an analysis of her embryos and  
 16:16:42 18 there are really two analysis.  
 16:16:43 19 There is the genetic analysis that Dr. Hughes  
 16:16:45 20 provided, but there is also our analysis how well the  
 16:16:48 21 embryos are growing, and we need to use both of those  
 16:16:52 22 specific information to determine which embryos to  
 16:16:55 23 transfer.  
 16:16:55 24 In other words, if we have an embryo that's a  
 16:17:00 25 nonaffected cystic fibrosis embryo, but it's a very poor

16:18:23 1 Q. A "carrier," a carrier by one of the two parents?  
 16:18:28 2 A. By one or the other, yes.  
 16:18:30 3 Q. But not both?  
 16:18:31 4 A. Correct.  
 16:18:32 5 Q. Okay. Now we get down to eight, it says,  
 16:18:39 6 "Carrier maternal okay for transfer."  
 16:18:41 7 What does that mean?  
 16:18:43 8 A. That means that that embryo is a carrier and they  
 16:18:48 9 had completed genetic -- they had received genetic  
 16:18:52 10 results on both the CF10 and CF11.  
 16:18:58 11 Q. And that one is okay for transfer?  
 16:19:09 12 A. According to Dr. Hughes, yes.  
 16:19:09 13 Q. But he doesn't say that seven is okay for  
 16:19:09 14 transfer or that four is okay for transfer?  
 16:19:11 15 A. No, he doesn't say it's not okay for transfer.  
 16:19:15 16 Q. Okay.  
 16:19:30 17 MR. STEIN: Can someone tell me what the  
 16:19:31 18 bells are?  
 16:19:32 19 MR. EICHHORN: It's my phone.  
 16:19:33 20 I am sorry.  
 16:19:34 21 MR. STEIN: That's okay.  
 16:19:34 22 Q. In this case an election was made to transfer not  
 16:19:42 23 eight and ten, but two other -- but other embryos. Is  
 16:19:47 24 that right?  
 16:19:47 25 A. That's right.

16:17:04 1 looking embryo, then that embryo will have a low  
 16:17:09 2 priority for transfer.  
 16:17:11 3 If we have a beautiful embryo that's a cystic  
 16:17:15 4 fibrosis embryo, that embryo will not be transferred.  
 16:17:18 5 If we have an embryo that looks very nice and  
 16:17:20 6 maybe a carrier or is a carrier, then that transfer may  
 16:17:26 7 be -- that embryo may be a candidate for transfer.  
 16:17:32 8 Q. That's because only one of the two genetic  
 16:17:35 9 materials is a carrier. Is that right?  
 16:17:37 10 A. Yes. Abnormal. Only one of the two is abnormal.  
 16:17:41 11 Q. Okay. Four and seven samples are described, four  
 16:17:49 12 and seven samples are described by Dr. Hughes as  
 16:17:52 13 "Carrier at worst." Is that right?  
 16:17:54 14 A. Yes.  
 16:18:03 15 Q. And is it -- does it ever say "carrier at best"?  
 16:18:07 16 A. I don't see that written here.  
 16:18:08 17 Q. Does that mean anything, the words "Carrier at  
 16:18:11 18 worst," to you?  
 16:18:12 19 MR. EICHHORN: "Carrier at worst"?  
 16:18:13 20 MR. STEIN: Yes.  
 16:18:14 21 MR. EICHHORN: Does it mean anything?  
 16:18:16 22 A. Yes.  
 16:18:16 23 Q. It means it's suitable for transplant?  
 16:18:18 24 A. It means the worst-case scenario would be that  
 16:18:21 25 that embryo is a carrier.

16:19:47 1 MR. EICHHORN: Objection to the form.  
 16:19:48 2 Q. What embryo samples were implanted in invitro  
 16:19:56 3 fertilization?  
 16:19:59 4 A. Embryo No. 7 and Embryo No. 8.  
 16:20:05 5 Q. And ten was not acceptable because of the  
 16:20:06 6 condition of the embryos at the time you determined  
 16:20:12 7 implantation. Is that right?  
 16:20:14 8 A. That's correct.  
 16:20:40 9 Q. Now, did the cells continue to divide while in  
 16:20:44 10 the possession of Genesis Genetics?  
 16:20:47 11 A. I don't know.  
 16:20:50 12 Q. Well, would Genesis Genetics have more than one  
 16:20:53 13 cell to examine from each of the embryos?  
 16:20:57 14 A. Occasionally they do, but I don't see the  
 16:21:02 15 document that shows that one cell was sent per embryo.  
 16:21:08 16 Q. I am sorry?  
 16:21:12 17 A. One cell was sent per embryo.  
 16:21:16 18 Q. So then Dr. Hughes would only have one cell per  
 16:21:20 19 embryo to examine and report on?  
 16:21:21 20 A. That's correct.  
 16:21:22 21 Q. On an occasion do you send more than one cell per  
 16:21:26 22 embryo?  
 16:21:27 23 A. On occasion.  
 16:21:27 24 Q. What determines whether you send more than one?  
 16:21:30 25 A. I am not sure.

16:21:32 1 Q. Who makes that decision?  
 16:21:33 2 A. The laboratory. People in the laboratory.  
 16:21:37 3 Q. Okay. Were you told at all by Dr. Hughes that he  
 16:21:38 4 was disappointed with the results of his studies?  
 16:21:39 5 A. No.  
 16:21:53 6 Q. And were you told by Dr. Hughes that many of the  
 16:22:04 7 embryos were significantly behind in their development?  
 16:22:06 8 A. No.  
 16:22:10 9 Q. If you were told that, would that affect your  
 16:22:13 10 decision as to whether to implant?  
 16:22:15 11 A. No.  
 16:22:15 12 Q. Why not?  
 16:22:18 13 A. Because I haven't found that embryo growth has  
 16:22:21 14 anything to do with whether or not the analysis  
 16:22:26 15 represents the embryo.  
 16:22:29 16 Q. All right.  
 16:22:30 17 Well, do you know how he can make an analysis of  
 16:22:33 18 the embryo based on the single cell?  
 16:22:36 19 A. You mean the growth of the embryo?  
 16:22:36 20 Q. Yes.  
 16:22:39 21 A. No.  
 16:22:40 22 Q. All right.  
 16:22:41 23 Do you find that unusual for a laboratory to make  
 16:22:45 24 a comment on the growth of the embryo?  
 16:22:50 25 A. I am not sure what information he had, so I don't

16:25:12 1 Q. Capacity to determine the nature of the studies  
 16:25:15 2 done at a laboratory such as Genesis Genetics?  
 16:25:18 3 A. I wouldn't know.  
 16:25:35 4 Q. Is the number of cells at the time of biopsy at  
 16:25:39 5 all significant in terms of the viability of those cells  
 16:25:43 6 for implantation?  
 16:25:44 7 MR. EICHHORN: I am sorry.  
 16:25:45 8 Could you read that back?  
 16:25:46 9 (Whereupon, the court reporter reads as  
 16:25:59 10 requested.)  
 16:25:59 11 A. Yes.  
 16:25:59 12 MR. EICHHORN: Objection to the form.  
 16:26:00 13 I don't understand it.  
 16:26:01 14 If you understand it.  
 16:26:03 15 MR. LEUCHTMAN: Viability or suitability?  
 16:26:05 16 MR. STEIN: To me those two are -- words are  
 16:26:09 17 synonymous.  
 16:26:11 18 MR. LEUCHTMAN: They are not.  
 16:26:11 19 Q. Do you think they are not?  
 16:26:12 20 A. I do think they are not.  
 16:26:14 21 MR. LEUCHTMAN: I object to the form of the  
 16:26:15 22 question.  
 16:26:16 23 Now, he can try to give an answer or  
 16:26:19 24 rephrase it.  
 16:26:20 25 It's up to you.

58

16:22:54 1 think I can comment.  
 16:22:58 2 Q. Well, don't you, as the physician, usually know  
 16:23:03 3 what information is given to the laboratory for their  
 16:23:07 4 analysis?  
 16:23:07 5 A. I know that they receive a cell to analyze.  
 16:23:12 6 If he is given any information about the growth  
 16:23:14 7 of the other embryos, I am not sure.  
 16:23:17 8 Q. Okay.  
 16:23:30 9 Do you consider the set that he had, the set  
 16:23:33 10 of -- samples to be less than optimal?  
 16:23:47 11 A. I am sorry.  
 16:23:48 12 I don't completely understand the question.  
 16:23:50 13 Q. Okay. Well, do you think that most of the cells  
 16:24:00 14 that he was sent were of poor quality and would not be  
 16:24:02 15 helpful?  
 16:24:03 16 A. No.  
 16:24:36 17 Q. Now, are you familiar with the mechanisms that  
 16:24:42 18 Dr. Hughes used, that is, his laboratory used, to make a  
 16:24:46 19 determination in the presence of the cystic fibrosis in  
 16:24:52 20 these embryos?  
 16:24:53 21 A. I am not.  
 16:25:02 22 Q. From your knowledge, is there anyone here, at the  
 16:25:08 23 -- at the Fertility Department, who has that capacity by  
 16:25:08 24 virtue of your discussions with them?  
 16:25:10 25 MR. EICHHORN: What capacity specifically?

60

16:26:21 1 Q. Why don't you think that's --  
 16:26:24 2 A. Well, "suitability" implies genetics, and  
 16:26:27 3 "viability" assumes nongenetics.  
 16:26:30 4 Q. Okay. So then I will rephrase the question and  
 16:26:34 5 ask you, are the number of cells at the time of biopsy  
 16:26:38 6 an indication of suitability for implantation?  
 16:26:40 7 A. I don't believe so.  
 16:26:43 8 Q. Is that the general -- is there literature  
 16:26:48 9 discussing this subject?  
 16:26:49 10 A. I am not aware.  
 16:27:04 11 Q. Were you struck by the fact when you looked at  
 16:27:07 12 this report from Genesis Genetics by the fact that only  
 16:27:12 13 three of the ten samples sent containing the DNA from  
 16:27:20 14 the husband, were able to be analyzed?  
 16:27:23 15 A. No.  
 16:27:32 16 Q. Is that common, to your experience, that only  
 16:27:37 17 three out of ten samples allow one of the two partners  
 16:27:40 18 to be analyzed for the presence of the CF, cystic  
 16:27:47 19 fibrosis, mutation?  
 16:27:48 20 A. It's common for some cells not to be amplified.  
 16:27:52 21 Q. Well, you said "some."  
 16:27:55 22 When some reaches the number of 70 percent of the  
 16:27:59 23 cells of a single parent that cannot be analyzed, is  
 16:28:04 24 that a significant depreciation in the value of the  
 16:28:07 25 analysis done by the laboratory?

18:28:18 1 A. I don't know, because I am not completely  
18:28:19 2 familiar with the techniques that Dr. Hughes is using in  
18:28:19 3 his laboratory, so I don't know.

18:28:27 4 Q. Well, is it common for other laboratories to get  
18:28:27 5 back or report that seven out of ten of one of the  
18:28:27 6 mutations is not available for analysis?

18:28:30 7 A. It's more than average.

18:28:33 8 Q. Okay. Does the -- taking into consideration the  
18:28:38 9 risk of allele drop out, does the fact that seven out of  
18:28:50 10 ten of the samples did not allow a DNA analysis,  
18:28:59 11 increase the risk of a false diagnosis?

18:29:06 12 A. This is something which Dr. Hughes would be an  
18:29:11 13 expert on, and I am not sure.

18:29:14 14 Q. It doesn't fall within your expertise?

18:29:17 15 A. It does not.

18:29:30 16 Q. Well, suppose only one of the ten were reported  
18:29:35 17 as having a DNA signal, would you be troubled by that  
18:29:39 18 analysis by the laboratory in the advising of your  
18:29:42 19 patient as to whether to go ahead with invitro  
18:29:47 20 fertilization?

18:29:48 21 MR. EICHHORN: Objection to the form.

18:29:48 22 I think it's improper.

18:29:51 23 MR. LEUCHTMAN: I will join in that.

18:29:51 24 MR. EICHHORN: I think a hypothetical is an  
18:29:53 25 improper question, but you can answer it if you

18:30:52 1 Q. -- with the parents, Mrs. Grossbaum and Mr.

18:30:55 2 Grossbaum, regarding invitro fertilization of the  
18:31:00 3 embryos that had been retrieved. Is that correct?

18:31:02 4 A. That is correct.

18:31:03 5 Q. And that meeting took place here in your office?

18:31:06 6 A. Yes.

18:31:06 7 Q. And what did you tell them at that time?

18:31:09 8 A. I told them that there are -- we see the results  
18:31:14 9 for the analysis and there are embryos that had been  
18:31:21 10 determined to be carriers, and according to the report,  
18:31:28 11 Dr. Hughes' lab, they are carriers at worst and,  
18:31:33 12 therefore, we feel comfortable transferring them.

18:31:43 13 Q. And that was -- and that was the extent of the  
18:31:46 14 discussion --

18:31:47 15 A. Yes.

18:31:48 16 Q. -- you had with them? Is that correct?

18:31:49 17 A. That's correct.

18:32:11 18 Q. Do you know -- I may be asking this in a  
18:32:13 19 different way, but I do -- do I understand you don't  
18:32:16 20 have the expertise to explain why there is an inability  
18:32:20 21 to get a signal from a particular gene cell that's being  
18:32:25 22 analyzed?

18:32:26 23 A. I can tell you that I cannot be an expert in  
18:32:31 24 everything that goes on in Dr. Hughes' lab and he can't  
18:32:34 25 be an expert in everything that goes on here, so the

18:29:56 1 can.

18:29:57 2 A. I can't answer.

18:29:58 3 Q. Why can't you answer it?

18:29:58 4 A. Because every case is different.

18:30:04 5 Q. In what way?

18:30:06 6 A. Well, there may be certain circumstances which  
18:30:09 7 may lead to a laboratory telling me that they only have  
18:30:13 8 analysis on one.

18:30:16 9 Q. Let me ask you this: In this meeting that you  
18:30:24 10 have indicated took place with Chaya Grossbaum and her  
18:30:29 11 husband, I take it, both were present?

18:30:31 12 A. Yes.

18:30:32 13 Q. And what did you tell them?

18:30:34 14 A. Do you want me to go through the whole hour  
18:30:37 15 consultation?

18:30:38 16 MR. EICHHORN: Well, I don't think he means  
18:30:38 17 that meeting.

18:30:40 18 Do you mean the day of implantation?

18:30:42 19 MR. STEIN: Yes.

18:30:43 20 MR. EICHHORN: Or the first meeting?

18:30:44 21 Q. I mean after you got the report --

18:30:46 22 A. I see.

18:30:46 23 Q. -- from Genesis Genetics, you said you had a  
18:30:51 24 meeting --

18:30:52 25 A. Yes.

18:32:37 1 answer is I am not an expert in embryo biopsy DNA  
18:32:44 2 genetics.

18:32:51 3 Q. Well, when you receive a report from a laboratory  
18:32:55 4 such as Genesis Genetics, were you concerned about  
18:33:00 5 allele drop out?

18:33:06 6 A. Allele drop out is a possibility. However, that  
18:33:13 7 was signaled in Sample 2.

18:33:15 8 It said "ADO Paternal," allele drop out.

18:33:19 9 Q. Well, does that concern about allele drop out  
18:33:23 10 apply to all of the samples that are being reported on?

18:34:09 11 We are waiting your answer.

18:34:11 12 A. Yes, you are.

18:34:12 13 I am sorry.

18:34:12 14 Q. That's okay.

18:34:14 15 A. Can you repeat -- repeat the question, please?

18:34:14 16 (Whereupon, the court reporter reads as  
18:34:17 17 requested.)

18:35:04 18 A. I would have followed the recommendations of Dr.  
18:35:07 19 Hughes, and if he told me that allele drop out was a  
18:35:11 20 concern, I would have been concerned about it.

18:35:13 21 Q. And would you have advised the family of your  
18:35:16 22 concerns in that case?

18:35:16 23 A. Yes.

18:35:17 24 Q. Okay.

18:35:21 25 MR. STEIN: Next one.



16:51:26 1 A. That's in the consent form, so I do not.  
 16:51:36 2 Q. And are you aware of why it's in the consent  
 16:51:38 3 form?  
 16:51:44 4 A. Because errors can be made during the PGD  
 16:51:44 5 process.  
 16:51:51 6 Q. And if errors are made during the PGD process,  
 16:52:02 7 then what does amniocentesis and CVS testing have to do  
 16:52:02 8 with the errors that are made?  
 16:52:04 9 A. Well, a CVS testing would determine if the child  
 16:52:10 10 was affected with cystic fibrosis and the same for  
 16:52:13 11 amnio.  
 16:52:14 12 Q. And once that was determined of what moment is  
 16:52:18 13 it?  
 16:52:16 14 A. CVS sampling is performed at about ten or 11  
 16:52:22 15 weeks.  
 16:52:22 16 Amnio could be performed 16, 17, 18 weeks.  
 16:52:26 17 Q. Okay. And that tells the parents that their baby  
 16:52:29 18 has or has not cystic fibrosis. Is that correct?  
 16:52:31 19 A. Correct.  
 16:52:33 20 Q. And what benefit is that to the parents to know  
 16:52:36 21 that at ten -- ten, at ten weeks or 16 weeks?  
 16:52:40 22 A. Well, they may elect not to proceed with the  
 16:52:45 23 pregnancy based on those results.  
 16:52:46 24 Q. Okay. Is there any other reason to do those  
 16:52:51 25 tests other than to give the parents an opportunity to

16:54:28 1 the invitro fertilization procedure or the PGD testing?  
 16:54:32 2 A. No.  
 16:54:42 3 Q. Do I understand from your prior answer, any  
 16:54:46 4 language contained in the consent form was generated by  
 16:54:49 5 others than you and since the form was executed by  
 16:54:55 6 others than you, it's not something that you involve  
 16:54:58 7 yourself with?  
 16:54:58 8 A. Correct.  
 16:55:22 9 Q. Are you aware of any people -- any of your  
 16:55:25 10 patients who had terminated the pregnancy upon the  
 16:55:30 11 receipt of PGD testing results?  
 16:55:32 12 A. I am not.  
 16:56:45 13 Q. Doctor, is there anyone here in the department  
 16:56:48 14 that you know as being identified as Evans, E-v-a-n-s?  
 16:56:55 15 MR. EICHORN: Someone by the name of Evans.  
 16:56:57 16 A. Do you have any other names that go with that?  
 16:57:01 17 I am sorry.  
 16:57:02 18 I don't.  
 16:57:04 19 Q. That's okay. Were you aware or had it been  
 16:57:06 20 called to your attention that Genesis Genetics requires  
 16:57:12 21 a commitment to amnio or CVS testing before they would  
 16:57:18 22 do a study for PGD testing?  
 16:57:22 23 A. Yes.  
 16:57:22 24 Q. When did you become aware of that?  
 16:57:34 25 A. I became aware of that -- that's part of Dr.

74

16:52:53 1 elect whether to proceed with the pregnancy or not?  
 16:52:56 2 A. Well, they may get other information unrelated to  
 16:53:01 3 the CVS testing.  
 16:53:02 4 Q. Such as?  
 16:53:03 5 A. Other chromosome abnormalities, information about  
 16:53:07 6 neurotube defects in the case of amniocentesis.  
 16:53:11 7 Q. Okay. And knowing those things, likewise, would  
 16:53:14 8 give the parents an opportunity to determine whether or  
 16:53:16 9 not they want to proceed with the pregnancy. Is that  
 16:53:19 10 right?  
 16:53:19 11 A. Correct.  
 16:53:29 12 Q. Are there other tests which are given to the  
 16:53:34 13 parents, or to the mother, which would allow her to  
 16:53:42 14 assess the likelihood of one of those other  
 16:53:44 15 abnormalities without confirmatory information of CVS  
 16:53:52 16 testing or amniocentesis?  
 16:53:54 17 A. There are blood tests that can be performed.  
 16:53:56 18 Ultrasounds can be performed. They may not completely  
 16:54:00 19 rule out genetic, but it would certainly lower their  
 16:54:02 20 chance, lower their odds of having a genetic  
 16:54:05 21 abnormality, and possibly obviate the need for a CVS or  
 16:54:12 22 amnio.  
 16:54:12 23 Q. In your experience with the Grossbaums, did they  
 16:54:14 24 ever not comply with any of requests made by your  
 16:54:18 25 department with regard to or how she was to prepare for

76

16:57:34 1 Hughes' policy, so since we have been working with Dr.  
 16:57:34 2 Hughes, that's been his policy.  
 16:57:35 3 I was -- that's my answer.  
 16:57:42 4 Q. Okay. Did you discuss this patient with Dr.  
 16:57:44 5 Hughes at all?  
 16:57:45 6 A. I did not.  
 16:57:46 7 Q. Okay. Do you normally discuss any of Dr. Hughes'  
 16:57:51 8 studies with your patients?  
 16:58:05 9 (Whereupon, a discussion takes place off the  
 16:58:43 10 record.)  
 16:58:43 11 Q. How did you ascertain it was Dr. Hughes' policy  
 16:58:46 12 to require it?  
 16:58:51 13 A. Just through working here.  
 16:58:55 14 Q. Through working here?  
 16:58:57 15 A. Just through the relationship with him and  
 16:59:02 16 actually working with Dr. Grifo.  
 16:59:05 17 Dr. Grifo also explained to me early on that's a  
 16:59:09 18 requirement for PGD.  
 16:59:10 19 Q. For everybody in PGD?  
 16:59:12 20 A. Yes. Yes.  
 16:59:19 21 Q. I just have one or two questions that I know of.  
 16:59:31 22 Have you been aware -- maybe I asked this  
 16:59:36 23 before -- of any of the patients here at NYU's fertility  
 16:59:40 24 lab giving birth to a cystic fibrosis baby other than  
 16:59:45 25 the Grossbaums?



16:59:47 1 A. I am not aware. I cannot specifically cite a  
 17:00:16 2 case.  
 17:00:16 3 MR. STEIN: Thank you.  
 17:00:16 4 MR. EICHHORN: Okay.  
 17:00:16 5 Steve, Lew is finished.  
 17:00:20 6 MR. LEUCHTMAN: I don't have any questions.  
 17:00:21 7 MR. EICHHORN: I just have a couple.  
 17:00:26 8 CROSS-EXAMINATION BY MR. EICHHORN:  
 17:00:26 9 Q. Doctor, do you remember the Grossbaums?  
 17:00:27 10 A. Yes.  
 17:00:28 11 Q. Did Mr. or Mrs. Grossbaum ever say to you that  
 17:00:32 12 they would not undergo -- that she would not undergo  
 17:00:37 13 amnio or CVS?  
 17:00:40 14 A. No.  
 17:00:41 15 Q. If she had said that to you, would you have done  
 17:00:44 16 anything in response?  
 17:00:48 17 MR. STEIN: Just a hypothetical that we are  
 17:00:49 18 allowed.  
 17:00:49 19 MR. EICHHORN: Well, this goes to exactly  
 17:00:51 20 what your client said. Sure.  
 17:00:53 21 MR. STEIN: Okay.  
 17:00:54 22 A. I would have made a note of it.  
 17:00:58 23 I would have said, "This patient is going to do  
 17:00:58 24 IVV, PGD, and is not going to have prenatal testing."  
 17:01:08 25 Q. Okay. So you told us about Dr. Hughes' policy.

78

17:01:10 1 What would have been your policy here? You would  
 17:01:15 2 have allowed her to do it but noted it?  
 17:01:16 3 A. That's correct.  
 17:01:18 4 Q. Okay. And if she told you that along with noting  
 17:01:23 5 it, would that have generated any discussion?  
 17:01:26 6 A. Well, it would have generated the decision also.  
 17:01:28 7 It would have generated discussion A and B, she wouldn't  
 17:01:31 8 have signed the consent form.  
 17:01:33 9 What would have happened is, she would have  
 17:01:34 10 objected to signing the consent form, which sometimes  
 17:01:37 11 happens. The nurse would have said, "Okay, fine, there  
 17:01:40 12 is an objection here."  
 17:01:41 13 She would have brought me the consent form or had  
 17:01:44 14 me speak to the patient to clarify the issue further.  
 17:01:50 15 MR. EICHHORN: Okay. That's all I have.  
 17:01:53 16 REDIRECT-EXAMINATION BY MR. STEIN:  
 17:01:53 17 Q. Doctor, who in this case administered the consent  
 17:01:58 18 forms?  
 17:01:58 19 A. Nurse Kaycian.  
 17:02:01 20 Q. Pardon me?  
 17:02:02 21 A. Kaycian Brown.  
 17:02:02 22 Q. Is she still here at the hospital?  
 17:02:06 23 A. She is not.  
 17:02:07 24 Q. How long ago did she leave?  
 17:02:09 25 A. I am not sure.

17:02:15 1 Q. How do you spell her name?  
 17:02:22 2 We have that.  
 17:02:22 3 Thank you.  
 17:02:23 4 MR. EICHHORN: Okay. We are done.  
 17:02:24 5 MR. STEIN: We are done.  
 17:02:25 6 MR. EICHHORN: We are done, Steve.  
 17:02:27 7 MR. LEUCHTMAN: Thanks, gentlemen.  
 17:02:28 8 See you tomorrow.  
 17:02:28 9 MR. STEIN: Okay.

\* \* \*

# 1 CERTIFICATION

2  
 3 I, PHILIP A. FISHMAN, a Notary Public and  
 4 Certified Shorthand Reporter for the State of New  
 5 Jersey, do hereby certify that prior to the commencement  
 6 of the examination, FREDERICK LICCIARDI was duly sworn  
 7 by me to testify the truth, the whole truth and nothing  
 8 but the truth.

9 I DO FURTHER CERTIFY that the foregoing is a true  
 10 and accurate transcript of the testimony as taken  
 11 stenographically by and before me at the time, place and  
 12 on the date hereinbefore set forth.

13 I DO FURTHER CERTIFY that I am neither a relative  
 14 nor employee nor attorney nor counsel of any of the  
 15 parties to this action and that I am neither a relative  
 16 or employee of such attorney or counsel, and that I am  
 17 not financially interested in the action.

18  
 19  
 20 Dated

PHILIP A. FISHMAN, C.S.R.  
 A Notary Public of the  
 State of New Jersey

21  
 22  
 23  
 24  
 25

# **EXHIBIT 12**

Morganstern-Grossbaum results – 07/19/2004

Patient: Chaya Morganstern-Grossbaum – carrier - Exon 11, G542X Nt1756g>t  
 Partner: Menachem Grossbaum – carrier - Exon 10. dF508Nt1652 delCTT

Locus ID: 1080      Chromosome: 7q31.2      Gene: CFTR  
 OMIM: 602421

Biopsy done 7/17/2004 – began 10 am EDT, completed 11 am EDT  
 Quality is 1-4, where 1 is best  
 20 total tubes – 10 cells, 10 blanks

Sample	Quality	CF 10	CF 11	Call
2	2-8c	No deletion	T only	Possibly affected – ADO paternal
3	2-3c	No amp	No amp	No molecular signal
4	2-4c	No amp	G	Carrier at worst
7	2-7c	No amp	G	Carrier at worst
8	2-8c	No deletion	G/T	Carrier maternal – OK for transfer
9	2-4c	No amp	No amp	No molecular signal
10	2-4c	No deletion	G/T	Carrier maternal – OK for transfer
13	2-4c	No amp	G	Carrier at worst
14	2-7c	No amp	No amp	No molecular signal
15	2-4c	No amp	G	Carrier at worst
CG		No deletion	G/T	Control – as expected
MG		Het. deletion	G	Control – as expected

Note: For sample 2, since only the mutant maternal allele was observed, it is possible that the paternal allele also dropped out of CF 10, and could be affected.

All controls and media blanks worked as expected. These data are very clear. All media blanks showed no evidence of exogenous DNA contamination.

Electronically signed,

Mark Hughes, M.D. Ph.D.